

IN THE CIRCUIT COURT OF THE  
EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY,  
FLORIDA

STATE OF FLORIDA,

CASE NO. 2012CF035337A

Plaintiff,

vs.

BRANDON LEE BRADLEY,

Defendant.

**OBJECTION TO STANDARD INSTRUCTION ON "PREMEDITATED  
MURDER" AND MOTION FOR CORRECTED INSTRUCTION ON FIRST  
DEGREE MURDER FROM PREMEDITATED DESIGN**

The Defendant, BRANDON LEE BRADLEY, hereby objects to the giving of the standard jury instruction on "premeditated murder" and moves that this Court give his corrected jury instruction on murder from premeditated design.

This is a capital case in which the prosecution is asking this Court to impose the death penalty. Accordingly, heightened standards of due process apply. *See Elledge v. State*, 346 So.2d 998 (Fla. 1977) ("heightened" standard of review), *Mills v. Maryland*, 108 S.Ct. 1860, 1866 (1988) ("In reviewing death sentences, the Court has demanded even greater certainty that the jury's conclusions rested on proper grounds."), *Proffitt v. Wainwright*, 685 F.2d 1227, 1253 (11th Cir.1982) ("Reliability in the factfinding aspect of sentencing has been a cornerstone of [the Supreme Court's death penalty] decisions."), and *Beck v. Alabama*, 447 U.S. 625, 638, 100 S.Ct. 2382, 65 L.Ed.2d 392 (1988) (same principles apply to guilt determination). "Where a defendant's life is at stake, the Court has been particularly sensitive to insure that every safeguard is observed." *Gregg v. Georgia*, 428 U.S. 153, 187, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (plurality opinion) (citing cases).

Section 775.021(1), Florida Statutes, sets out the rule for construing provisions of the Florida Criminal Code:

The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is

susceptible of differing constructions, it shall be construed most favorably to the accused.

This principle of strict construction is not merely a maxim of statutory interpretation: it is rooted in fundamental principles of due process. *Dunn v. United States*, 442 U.S. 100, 112, 99 S.Ct. 2190, 60 L.Ed.2d 743 (1979) (rule "is rooted in fundamental principles of due process which mandate that no individual be forced to speculate, at peril of indictment, whether his conduct is prohibited. [Cit.] Thus, to ensure that a legislature speaks with special clarity when marking the boundaries of criminal conduct, courts must decline to impose punishment for actions that are not "plainly and unmistakably" proscribed. [Cit.]"). This principle of strict construction of penal laws applies not only to interpretations of the substantive ambit of criminal prohibitions, but also to the penalties they impose. *Bifulco v. United States*, 447 U.S. 381, 100 S.Ct. 2247, 65 L.Ed.2d 205 (1980). It applies to Florida capital proceedings. *Trotter v. State*, 576 So.2d 691, 694 (Fla.1990) (sentence of imprisonment aggravating circumstance).

#### **THE STATUTORY OFFENSE OF MURDER FROM PREMEDITATED DESIGN**

Section 782.04(1)(1), Florida Statutes defines first degree murder. It provides for two forms of the offense. One is murder from a premeditated design, and the other is felony murder. The statute defines murder from premeditated design as follows:

The unlawful killing of a human being:

1. When perpetrated from a premeditated design to effect the death of the person killed or any human being.

In *McCutchen v. State*, 96 So.2d 152, 153 (Fla. 1957), the Supreme Court defined the "premeditated design" element (emphasis supplied):

A premeditated design to effect the death of a human being is a fully formed and conscious purpose to take human life, formed upon reflection **and deliberation**, entertained in the mind before and at the time of the homicide. The law does not prescribe the precise period of time which must elapse between the formation of and the execution of the intent to

take human life in order to render the design a premeditated one; it may exist only a few moments and yet be premeditated. If the design to take human life was formed a sufficient length of time before its execution to admit of some reflection *and deliberation* on the part of the party entertaining it, and the party at the time of the execution of the intent was fully conscious of a settled and fixed purpose to take the life of a human being, and of the consequence of carrying such purpose into execution, the intent or design would be premeditated within the meaning of the law although the execution followed closely upon formation of the intent.

*See also Littles v. State*, 384 So.2d 744 (Fla. 1st DCA 1980) (quoting *McCutchen*).

In *Owen v. State*, 441 So.2d 1111, 1113 n.4 (Fla. 3rd DCA 1983), the court wrote (emphasis supplied):

"'Premeditation' and 'deliberation' are synonymous terms, which, as elements of first-degree murder, mean simply that the accused, before he committed the fatal act, intended that he would commit the act at the time that he did, and that death would be the result of the act." [Cit.] Deliberation is the element which distinguishes first and second degree murder. [Cit.] **It is defined as a prolonged premeditation and so is even stronger than premeditation.** [Cit.]

Similarly, the revised fourth edition of Black's Law Dictionary defines "deliberation" as follows at page 514:

**DELIBERATION.** The act or process of deliberating. The act of weighing and examining the reasons for and against a contemplated act or course of conduct or a choice of acts or means. See Deliberate.

#### THE REQUIREMENT OF CORRECT JURY INSTRUCTIONS

The trial court judge has a duty to instruct the jury on the law. Rule 3.390(a), Florida Rules of Criminal Procedure, provides in pertinent part: "The presiding judge shall charge the jury only upon the law of the case at the conclusion of argument of counsel." Due process requires instructions as to what the state must prove in order to obtain a conviction. *See Screws v. United States*, 325 U.S. 91, 107, 65 S.Ct. 1031, 89 L.Ed. 1495 (1945) (willfully depriving person of civil rights; jury not instructed as to meaning of "willfully": "And where the error is so fundamental as not to submit to the jury the essential ingredients of the only offense on which the conviction could rest, we think it is necessary to take note of it on our own motion. Even those guilty of the most heinous offenses are entitled to a fair trial."). It is fundamental error to fail to instruct the jury incorrectly as to what the state must prove in order to obtain a conviction. *State v. Delva*, 16 FLW S186 (Fla. Feb. 21, 1991), *Sochor v. State*, 16 FLW S297 (Fla. May 2, 1991).

The federal and state constitutional rights to trial by jury carry with them the right to accurate instructions as to the elements of the offense. In *Motley v. State*, 155 Fla. 545, 20 So.2d 798, 800 (1945), the court wrote in reversing a conviction where there was an incorrect instruction on self-defense:

There is much at stake and the right of trial by jury contemplates trial by due course of law. See Section 12, Declaration of Rights, Florida Constitution....We have said that where the court attempts to define the crime, for which the accused is being tried, it is the duty of the court to define each and every element, and failure to do so, the charge is necessarily prejudicial to the accused and misleading. [Cit.] The same would necessarily be true when the same character of error is committed while charging on the law relative to the defense.

"Amid a sea of facts and inferences, instructions are the jury's only compass." *U.S. v. Walters*, 913 F.2d 388, 392 (7th Cir.1990) (refusal to give theory of defense instruction required reversal of conviction). Arguments of counsel cannot substitute for instructions by the court. *Taylor v. Kentucky*, 436 U.S. 478, 488-489, 92 S.Ct. 1930, 56 L.Ed.2d 468 (1978).

Standard jury instructions are not necessarily correct statements of the law. In *Yohn v. State*, 476 So.2d 123 (Fla. 1985), the court held that the standard jury instruction on insanity incorrectly stated Florida law. The court wrote at page 127 that promulgation

of the standard instructions does not relieve the trial court of its duty to instruct the jury on the law.

A jury instruction that relieves the state of the burden of proof or of persuasion as to an element of the offense is unconstitutional. In *Mullaney v. Wilbur*, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975), a defendant in Maine was charged with murder, which under Maine law required proof not only of intent but of malice. The trial court instructed the jury that malice was an essential element of the crime. But then it instructed the jury that if the prosecution established that the homicide was both intentional and unlawful, malice was to be implied unless the defendant proved by a fair preponderance of the evidence that he acted in the heat of passion on sudden provocation. The Supreme Court held that the resulting conviction was unconstitutional because the instruction relieved the state of the burden of proving the malice element. *See Sandstrom v. Montana*, 442 U.S. 510, 524, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979) (discussing *Mullaney*). In *Francis v. Franklin*, 471 U.S. 307, 105 S.Ct. 1965, 85 L.Ed.2d 344 (1985), the Supreme Court held that a jury instruction is unconstitutional where it relieves the state of the burden of persuasion as to the elements of the offense charged. Where a jury instruction authorizes a conviction on an improper theory of guilt, the resulting conviction is illegal. *E.g. Mills v. Maryland*, 108 S.Ct. 1860, 1866 (1988) (citing cases).

### **THE STANDARD JURY INSTRUCTION ON "PREMEDITATED MURDER"**

The standard jury instruction on first degree murder does not explicitly state that "a premeditated design" is an element of first degree murder. It provides:

There are two ways in which a person may be convicted of first degree murder. One is known as premeditated murder and the other is known as felony murder.

Before you can find the defendant guilty of First Degree Premeditated Murder, the State must prove the following three elements beyond a reasonable doubt:

1. **(Victim)** is dead.
2. The death was caused by the criminal act or agency of **(defendant)**.
3. There was a premeditated killing of **(victim)**.

"Killing with premeditation" is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the premeditation at the time of the killing.

If a person had a premeditated design to kill one person and in attempting to kill that person actually kills another person, the killing is premeditated.

#### WHY THE STANDARD INSTRUCTION IS INCORRECT AND UNCONSTITUTIONAL

The defendant objects to use of the standard instruction in that it is unconstitutional and misstates Florida law. The standard instruction unconstitutionally relieves the state of its burdens of proof and persuasion as to the statutory element of premeditated design. The only attempt in defining the premeditation element is: "'Killing with premeditation' is killing after consciously deciding to do so." There is no mention of the requirement, under *McCutchen*, that the state prove "a fully formed and conscious purpose to take human life, formed upon reflection and deliberation," and that "the party at the time of the execution of the intent was fully conscious of a settled and fixed purpose to take the life of a human being, and of the consequence of carrying such purpose into execution."

Additionally, the standard instruction relieves the state of the burdens of proof and persuasion as to the requirement that the premeditated design be fully formed before the killing. While the standard instruction states that "killing with premeditation" is killing after consciously deciding to do so, it relieves the state of its burden by creating a presumption: "**It will be sufficient proof** of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt **of the premeditation at the time of the killing.**" Thus the jury is told that it need only find

premeditation at the time of the killing. Finally, it does not instruct the jury that the premeditated design element, carrying with the element of deliberation, requires more than simple premeditation.

This Court should not give the standard instruction. Instead it should instruct the jury on premeditation as set out in the attached proposed defense instruction.

Further grounds will be argued *ore tenus*.

WHEREFORE, the defendant objects to the standard jury instruction on "premeditated murder," and moves that this Court give a corrected instruction on murder from premeditated design in place of the standard instruction on "premeditated murder."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-service to the Office of the State Attorney, Brevard County, Florida, this 8th day of November, 2013.



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