

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

CASE NO. 2012-CF-35337-A

STATE OF FLORIDA,

Plaintiff,

vs.

BRANDON LEE BRADLEY,

Defendant.

MOTION FOR FINDINGS OF FACT BY THE JURY

The Defendant, Brandon Bradley, notwithstanding State v. Steele, 921 So.2d 538, 548 (Fla. 2006) (a trial court departs from the essential requirements of law in requiring a special verdict form that details the jurors' votes on specific aggravating circumstances.) moves this Court to direct the jury to return findings of fact as to aggravating and mitigating circumstances in concert with the jury's recommendation as to the appropriate penalty in this case based on the following:

1. The trial court is required to impose a sentence of life imprisonment without parole in the absence of sufficient statutory aggravating circumstance to justify imposition of the death penalty. §921.141, Florida Statutes. See Buckner v. State, 714 So.2d 384 (Fla. 1998); Elam v. State, 636 So.2d 1312 (Fla. 1994); Thompson v. State, 565 So.2d 1311 (Fla. 1990); Banda v. State, 536 So.2d 221 (Fla. 1988).

2. The presence of sufficient statutory aggravating circumstances is an additional fact not present in the jury's initial verdict determination of guilt or innocence. Because imposition of the death penalty is only possible when sufficient statutory aggravating circumstances exist, these statutory factors are elements of the offense and the existence of sufficient aggravating circumstances must be proved beyond a reasonable doubt to a unanimous 12-person jury. Amendments 5, 6, 8 & 14, United States Constitution; article I, sections 2, 9, 16, 17, 21, 22 and 23 Florida Constitution; §913.10, Fla.Stat.; State v.

Overfelt, 457 So.2d 1385 (Fla. 1984); Ring v. Arizona, 536 U.S. 584 (2002); Apprendi v. New Jersey, 530 U.S. 466 (2000).

3. Florida's statutory scheme for imposing a death sentence otherwise requires that a death sentence be supported by findings of fact supporting the aggravating and mitigating circumstances. §921.141, Fla.Stat.; State v. Dixon, 283 So.2d 1 (Fla. 1973). During the penalty phase, the jury is presented evidence as to aggravating and mitigating circumstances and instructed to make a sentencing determination based upon the jury's findings as to these circumstances.

4. The trial court then considers the jury's recommendation and imposes a sentence. If the sentence is death, this Court must support the sentence with findings of facts as to the aggravating circumstances. As Justice Pariente wrote in her dissenting opinion in State v. Steele, sura:

I would also conclude that requiring the jury to specify its findings and vote on each aggravating factor submitted during the penalty phase is permissible, and certainly not a departure from the essential requirements of law resulting in a miscarriage of justice. While findings on individual aggravators are not mandated under our rules of procedure or substantive law, neither do the rules and statutes prohibit the use of a special verdict. Rather than cause a miscarriage of justice, a special verdict on aggravating circumstances promotes justice by enhancing juror fact-finding, conveying useful information to the sentencing court, and facilitating appellate review. It is also in accord with the report of the Criminal Court Steering Committee to our Court. Id @ 552.

5. The sentence of death is then subject to mandatory appellate review by the Supreme Court of Florida. This entails a review of written findings of fact and applications of law that support the sentence. Campbell v. State, 571 So.2d 415, 420 (Fla. 1990) ("The court next must weigh the aggravating circumstances against the mitigating and, in order to facilitate appellate review, must expressly consider in its written order each established mitigating circumstance."); Grossman v. State, 525 So.2d 833, 839 (Fla. 1988) ("It is these written findings of fact and the trial court record which furnish the basis for this Court's review of the death sentence."); State v. Dixon, 283 So.2d 1 (Fla. 1973).

6. The absence of any findings of fact by the jury precludes meaningful and consistent appellate review of constitutional errors that infect the jury determination process. Trial courts, presumed to know the law, repeatedly make mistakes in applying the law to the facts when a death sentence is imposed. Identical errors made by jurors go completely undetected, uncorrected, and unreliable, arbitrary and capricious imposition of the death penalty results.

WEHREFORE, this Court is asked to require the jury to make findings of fact as to each statutory aggravating factor that is used to impose a death sentence.

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 8 day of November, 2013.

FGN: 0612414



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