

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 INTERROGATORY PENALTY PHASE VERDICT

The Defendant BRANDON LEE BRADLEY, by and through his undersigned counsel, and pursuant to article I, sections 2, 9, 16, 17, 21 and 22 of the Florida Constitution and the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution, moves this court to enter its order to permit the use of an interrogatory penalty-phase verdict as outlined below, based on the following:

1. The Defendant is charged by Indictment with the offense of first-degree premeditated murder.
2. The State of Florida has announced its intention to seek the death penalty in this case.
3. Pursuant to Section 921.141, Florida Statutes (1999), the Court will instruct the jury as to the aggravating and mitigating circumstances and have the jury determine whether a sentence of death by lethal injection or life imprisonment without parole is appropriate.

4. To provide Due Process, meaningful appellate review, the right to a jury determination of the statutory elements underlying punishment and the right to a reliable sentence under article I, sections 2, 9, 16, 17 and 22 of the Florida Constitution and the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, the jury must determine the presence of the statutory elements upon which imposition of the death penalty is based. Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002); State v. Dixon, 283 So.2d 1, 8 (Fla. 1973)(aggravating circumstances in Section 921.141(5), Florida Statutes, actually “define the offenses” punishable by the death penalty. Even though the requirements of Ring have been rejected as applying to Florida, see Bottoson v. Moore, 833 So.2d 693, 695 (Fla. 2002), the Florida Supreme Court has stated:

A jury recommendation under our trifurcated death penalty statute should be given great weight. In order to sustain a sentence of death following a jury recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ.

Tedder v. State, 322 So.2d 908, 910 (Fla. 1975); See Keen v. State, 775 So.2d 263 (Fla. 2000); San Martin v. State, 717 So.2d 462, 471 (Fla. 1998), quoting Tedder, *supra*. In this regard, the sentencing determination of the jury actually determines the standard the trial court uses to make its written findings of fact because the evidence must be viewed in a light most favorable to the jury’s sentencing determination to see whether a reasonable person could agree with it.

5. Similarly, a jury recommendation of death must be as specific as possible to enable the trial court to determine whether jurors properly considered and appropriately weighed valid sentencing circumstances and applied the appropriate legal standard for each legal consideration required under Section 921.141, Florida Statutes.

6. The Standard Jury Instructions in Criminal Cases are suggested as a guide to trial courts. They should be modified to suit the facts of the case.

7. In the instant case, without waiving the demand that the jury unanimously find the existence of statutory aggravating factors under Section 921.141(5), Florida Statutes but realizing that the request has been rejected by the Florida Supreme Court in Bottoson, supra, the Defendant asks that the jury be provided a verdict form that includes:

A: A provision outlining each aggravating circumstance and designating the burden of proof appropriate to find the circumstance, with a section indicating the vote of the jury as to that aggravating circumstance found, in substantially the following form:

We, the jury, by a vote of ____ to ____, find beyond and to the exclusion of every reasonable doubt that the crime for which the defendant is being sentenced was [e.g., committed for financial gain.]

In addition to clarifying the jury's determination, the above provision protects against a violation of the Defendant's rights to be free from double jeopardy in the event that the case is remanded for re-sentencing, in that the court would know specifically which aggravating circumstances were rejected by the initial jury. Amendments Five and Fourteen of the Constitution of the United States; article I, sections 9 and 16 of the Constitution of the State of Florida; North Carolina v. Pearce, 395 U.S. 711 (1969).

The above provisions do not invade the province of the jury in capital advisory sentencing in that the statement of the vote upon each aggravating circumstance is not any intimation as to the **weight** assigned to that circumstance by the jury. A separate provision requiring the jury to state the facts upon which the circumstance is found allows the trial court and the appellate court to determine whether the jury's recommendation conforms with applicable law. Thus, the verdict form should contain an inquiry asking, for each aggravating circumstance found, the factual basis for that finding, so that the inquiry would read substantially as follows:

"Our finding that the homicide was committed in an especially heinous, atrocious

or cruel manner” is based on the following facts: (specify)”.

B: A provision outlining each mitigating circumstance defined by statute, a statement of the applicable quantum of proof, a statement of the jury’s vote upon said circumstance and a section allowing the jury room to write in those non-statutory mitigating circumstances they find to be applicable. For example:

We, the jury, by a vote of ____ to ____, are reasonably convinced that the defendant has no significant history of prior criminal activity, based upon the following:

We, the jury, by a vote of ____ to ____, are reasonably convinced that, in addition to the mitigating factors listed above, the Accused's lengthy record of employment should be considered by the Court as a mitigating circumstance.

C: A provision that the jury finds that the statutory aggravating considerations so outweigh the mitigating considerations that the death penalty is justified beyond a reasonable doubt.

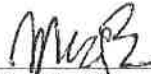
8. In addition to providing the trial court with guidance as to the appropriate penalty to impose, the provisions requested above in the form of an interrogatory verdict would allow for more informed appellate review of sentencing and more consistent application of proportionality review by the Supreme Court of Florida.

WHEREFORE, notwithstanding that the Florida Supreme Court has rejected the argument that Ring v. Arizona, supra, applies to Florida and that separate findings from the jury on the sentencing considerations are constitutionally required, this

Court is asked to provide a special interrogatory verdict form as outlined above.

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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