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

STATE OF FLORIDA,
Plaintiff,

CASE NO. 2012CF035337A

vs.

BRANDON LEE BRADLEY,
Defendant.

_____ /

MOTION FOR SPECIAL VERDICT AS TO THEORY OF GUILT

The defendant, BRANDON LEE BRADLEY moves that this court require that the jury render a special verdict as to the theory of guilt of first degree murder, and states:

1. 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*, 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).

2. Although the indictment alleges murder from a premeditated design, the state may also proceed on a theory of felony murder. Without abandoning the argument that proceeding on such an uncharged theory of guilt would violate the Notice and Due Process Clauses of the state and federal constitutions, the defendant argues that the court must require that the jury render a special verdict explicitly stating the theory of guilt if it returns a verdict of guilty of first degree murder.

3. In *Schad v. Arizona*, 111 S.Ct. 2491 (1991), the Court ruled that, "on the facts of th[e] case," the Due Process Clause did not require special verdicts as to the theory of first degree murder accepted by the jury. The Court specifically did not decide the issue now presented: the effect of a lack of a special verdict on the penalty determination. The plurality wrote at footnote 9: "...Moreover, the dissent's concern that a general verdict does not provide the sentencing judge with sufficient information about the jury's findings to provide a proper premise for the decision whether or not to impose the death penalty...goes only to the permissibility of a death sentence imposed in such circumstances, not to the issue currently before us, which is the permissibility of the conviction." At footnote 4 of his dissent, Justice White noted that "the disparate intent requirements of premeditated murder and felony murder have life-or-death consequences at sentencing." *See also U.S. v. McNeese*, 901 F.2d 585, 605-606 (7th Cir.1990) (approving use of special verdicts where information sought is relevant to sentencing).

4. The argument presented here is that the life-or-death consequences of the jury's determination of the theory of guilt require special verdicts. Florida requires special verdict findings as to whether, for instance, an armed robber carried a firearm, or as to whether a burglar was armed, because of the effect of that finding at sentencing. In *State v. Overfelt*, 457 So.2d 1385, 1387 (Fla.1984), the court wrote:

The question of whether an accused actually possessed a firearm while committing a felony is a factual matter properly decided by the jury. Although a trial judge may make certain findings on matters not associated with the criminal episode when rendering a sentence, it is the jury's function to be the finder of fact with regard to matters concerning the criminal episode. To allow a judge to find that an accused actually possessed a firearm when committing a felony in order to apply the enhancement or mandatory sentencing provisions of section 775.087 would be an invasion of the jury's historical function and could lead to a miscarriage of justice in cases such as this where the defendant was charged with but not convicted of a crime involving a firearm.

It would violate the Equal Protection, Due Process, Jury Trial, and Cruel and Unusual Punishment Clauses of the state and federal constitutions not to require special verdicts in a capital case.

5. The defense acknowledges a conflict with the holding in State v. Steele, 921 So. 2d 538 (Fla. 2006); that a Trial Court departs from the essential requirements of law by using a special penalty phase jury form, but maintains that Apprendi v. New Jersey, 120 S.Ct. 2348 (2000), and Ring v. Arizona, 536 U.S. 584 (2002), mandate a finding that such a special verdict form and a unanimous finding as to aggravating circumstances found beyond a reasonable doubt by a unanimous jury are prerequisites to a Constitutional death sentence.

Further grounds will be argued *ore tenus*.

WHEREFORE, the defendant moves that this Court require special verdicts as to the theory of guilt of first degree murder, or grant such other relief as may be appropriate.

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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