

Supreme Court of Florida

WEDNESDAY, FEBRUARY 11, 2015

CASE NO.: SC14-1412
Lower Tribunal No(s): 05-2012-CF-
035337

BRANDON LEE BRADLEY

vs. STATE OF FLORIDA

Appellant(s)

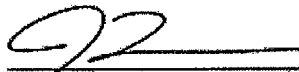
Appellee(s)

Appellant's Motion to Relinquish Jurisdiction to Clarify the Record is granted and the jurisdiction of the above cause is temporarily relinquished to the trial court for a period of sixty days.

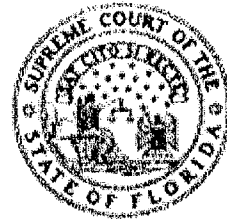
Counsel for the parties are hereby directed to file Status Reports with this Court every thirty days as to the progress of the relinquishment proceeding.

LABARGA, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, POLSTON, and PERRY, JJ., concur.

A True Copy
Test:



John A. Tomasino
Clerk, Supreme Court



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Served:

CHRISTOPHER SINCLAIR QUARLES
STACEY E. KIRCHER
HON. SCOTT ELLIS, CLERK
HON. MORGAN LAUR REINMAN, JUDGE
PHILIP GLEN ARCHER

SCOTT ELLIS
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IN THE SUPREME COURT OF FLORIDA

BRANDON BRADLEY,)
)
 Appellant,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

CASE NUMBER SC14-1412

MOTION TO RELINQUISH JURISDICTION TO CLARIFY THE RECORD

Appellant, by and through the undersigned counsel, respectfully requests that this Court relinquish jurisdiction for clarifying the existing record on appeal.

As grounds for this motion, Appellant states:

1. Following a jury trial, including a penalty phase, the trial court sentenced Appellant to death. This is Appellant's first direct appeal. It is apparent from the record on appeal that no live court reporter was used at Appellant's trial. Rather, as so many courtrooms have recently instituted, the trial was recorded by an electronic system commonly referred to as a "blue man." While the system usually works during testimony, it sometimes fails during jury selection and bench conferences. Undersigned counsel has determined that such is the case with this record.

2. Florida Rule of Judicial Administration 2.535(h) provides: , 939 So. 2d 966, 1027 (Fla. 2006):

(h) Court Reporting Services in Capital Cases. On or before January 1, 2001, the chief judge, after consultation with the circuit court judges in the circuit, shall enter an administrative order developing and implementing a circuit-wide plan for court reporting in all trials in which the state seeks the death penalty and in capital postconviction proceedings. The plan shall require the use of all measures necessary to expedite the preparation of the transcript, including but not limited to:

- (1) where available, the use of a court reporter who has the capacity to provide real-time transcription of the proceedings;
- (2) if real-time transcription services are not available, the use of a computer-aided transcription qualified court reporter;
- (3) the use of scopists, text editors, alternating court reporters, or other means to expedite the finalization of the certified transcript; and
- (4) the imposition of reasonable restrictions on work assignments by employee or contract court reporters to ensure that transcript production in capital cases is given a priority.

In re Amendments to the Florida Rules of Judicial Admin.--Reorganization of the Rules, 939 So. 2d 966, 1027 (Fla. 2006).

3. Florida Rule of Appellate Procedure 9.200 (f) provides:

1) If there is an error or omission in the record, the parties by stipulation, the lower tribunal before the record is transmitted, or the court may correct the record.

(2) If the court finds the record is incomplete, it shall direct a party to supply the omitted parts of the record. No proceeding shall be determined, because of an incomplete record, until an opportunity to supplement the record has been given.

4. Originally, the 18th circuit Office of the Public Defender designated that the court reporter transcribe only certain parts of jury selection, thereby excluding portions that that office determined were unnecessary. Subsequently, on motion filed by the Office of the Attorney General, this Court ordered that the record be supplemented with the excluded portions of voir dire. When the 13 volumes of supplemental record arrived, undersigned counsel had not even started reading the jury selection portion contained in original the record, since it was incomplete at the time. When undersigned counsel read the 13 volumes of supplemental record, the number of unintelligible portions of the record appeared to be staggering. While the meaning of some portions containing "unintelligible" can be fathomed in context, some portions cannot.

5. To complicate matters, the supplemental record containing 13 volumes of jury selection contain **only** the previously omitted portions. This results in a very disjointed transcript making it impossible to determine the proper order in which the proceedings occurred. Undersigned counsel had anticipated that the entire jury selection process would be re-transcribed in the proper order.

juror 184. Defense counsel asked him more open-ended questions requiring more expansive responses from the potential juror. Ultimately, the trial court denied Appellant's challenge for cause on juror 184. As this Court can see from the attached portion of the record on appeal, it is impossible to determine the potential juror's true feelings from the existing transcript. The court reporter may have been rushed in the preparation of this supplemental record where this Court set a tight time line for its filing. Ultimately, the court reporter needed additional time to complete the preparation. This may account for the lack of a complete, coherent transcript of the proceedings below.

8. The third excerpt from the record on appeal is from the prosecutor's opening statement where defense counsel objected, seemingly based on argumentative grounds. (R XXIV 157-61) At the bench conference, defense counsel, Mr. Pirolo says, "Judge, I'm going to object to be argumentative on those grounds." (R XXIV 158) Undersigned counsel strongly doubts that the record accurately reflects defense counsel's objection. The trial court ultimately overruled defense counsel's objection. This also should be clarified by either the court reporter or the parties below.

9. Appellant points out that the inability to provide a complete record on appeal, especially in a capital case, may lead to the grant of a new trial in its

entirety. Delap v. State, 350 So. 2d 462 (Fla. 1977).

WHEREFORE, Appellant asks this Honorable Court to relinquish jurisdiction so that the record on appeal can be clarified on these matters.

Respectfully submitted,

Christopher S. Quarles

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been emailed to the Office of the Attorney General, 444 Seabreeze Blvd., 5th Floor, Daytona Beach, Florida, 32118, capappdab@myfloridalegal.com, on this 31st day of December, 2014.

Christopher S. Quarles

CHRISTOPHER S. QUARLES
Assistant Public Defender