



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 IN LIMINE AND TO STRIKE PORTIONS OF
“FLORIDA STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES”
RE: CALDWELL v. MISSISSIPPI

The Defendant, BRANDON LEE BRADLEY, moves this Court, pursuant to article I, sections 2, 9, 16, 17, 21, 22 and 23 of the Florida Constitution and the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution, to limit the State Attorney, his assistants, witnesses, or agents from making any comment, statement or question during any portion of the trial which minimizes the jury’s sentencing decision with respect to the impact it will have on the judge’s sentencing determination, and to modify the standard jury instruction to more accurately state the law in Florida concerning the role of the jury in death penalty cases. In support of this motion, counsel for the Defendant submits:

1. It is constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the propriety of a death sentence rests elsewhere. Caldwell v. Mississippi, 472 U.S. 320, 86 L.Ed.2d 231, 105 S.Ct. 2633 (1985).

2. “Florida Standard Jury Instructions in Criminal Cases” instruct the jury in a manner that misleads the jury and over-emphasizes the fact that the jury makes an advisory sentencing determination. For instant, the standard instructions state the following:

Final decision as to what punishment shall be imposed rests solely with the judge of this court; however, the law requires that you, the jury, render to the court an advisory sentence as to what punishment should be imposed on the defendant ...

[I]t is now your duty to advise the court as to what punishment should be imposed upon the defendant....As you have been told, the final decision as to what punishment shall be imposed is the responsibility of the judge; however, it is your duty to follow the law that will now be given you by the court and render to the court an advisory sentence....

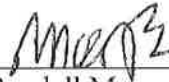
Undue repetition of the words “advisory” and “recommendation” in the standard jury instructions is misleading and **the jury is not told that the trial court can deviate from the jury’s determination only if it is wholly unreasonable.** See Mills v. Moore, 786 So.2d 532 (Fla. 2001) (Anstead, J., dissenting). Any comment, statement, or question by the State Attorney, his assistants, witnesses or agents which might lead the jury to believe that their decision in the penalty portion of the trial is just advisory or just a recommendation, or that the responsibility for determining the appropriateness of the Defendant’s death rests other than with the jury, as well as instructing the jury in accordance with the above described portions of “Florida’s Standard Jury Instructions in Criminal Cases” as described above, is unconstitutional under the rationale of Caldwell v. Mississippi, supra.

4. Comments and statements that violate the requirements of Caldwell v. Mississippi are unconstitutional and objectionable during trial. Case law requires that trial counsel make contemporaneous objections to any such comments in order to preserve any legal issue related to the error created by the making of the comment. It is the intention of undersigned counsel to preserve all issues of improper comment and the like in violation of Caldwell v. Mississippi, and reference to this motion in limine will be made during the objections to such improper statements and comments.

WHEREFORE counsel for the Defendant moves this Court to limit the State Attorney, his assistants, witnesses, or agents from making statements, as described above, which indicate to the jury that the responsibility for determining the appropriateness of a sentence of death for the Defendant rests other than with the jury, and to modify the standard jury instructions as indicated in the motion.

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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