

STATE OF FLORIDA

v.

CASEY MARIE ANTHONY,

Defendant.

) In the Circuit Court of the
) Ninth Judicial Circuit, in and for
) Orange County, Florida
)
) Case No.: 482008-CF-0015606-O
) Division 16
)
)
)
)
)

**DEFENDANT’S REPLY TO THE STATE’S RESPONSE TO DEFENDANT’S
 MOTION TO DECLARE § 921.141 UNCONSTITUTIONAL DUE TO ITS FAILURE TO
 NARROW THE SCOPE OF THE DEATH PENALTY**

COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through undersigned counsel, and submits this reply to the State’s Response to Defendant’s Motion to Declare § 921.141 Unconstitutional Due to its Failure to Narrow the Scope of the Death Penalty. The defense, and Miss Anthony, state the following:

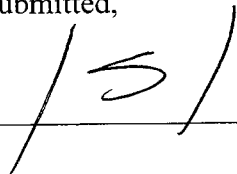
1. In the State’s response, they state “In her motion the defendant argues that the addition of F.S. 921.141 (i) –(o) since the opinion in Proffitt v. Florida have rendered the statute unconstitutional claiming that the application of those aggravating circumstances “make virtually every first-degree murder eligible for the death penalty”. This claim is asserted with little support or citation to published opinions.” (page two)
2. The state apparently misread Miss Anthony’s Memorandum of Law, as each page cites to United States Supreme Court law, Florida statutes, the United States and Florida Constitutions or all three.
3. The State also states: “The Defendant makes the bold and unsupported assertion that the combination of the felony murder and cold calculated and premeditated (CCP)

aggravating circumstance in particular apply to make virtually every first degree murder death eligible.” (also page two).

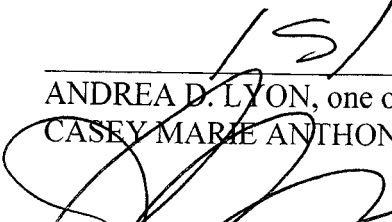
4. This response ignores logic and the fact that it is possible, should the state so choose, to charge every single first degree murder as a death penalty case. Noticeably absent from the state’s response is a single example of a first degree murder that they would be unable to ask for death under this statutory scheme.
5. The State also states: “The requirement that the aggravating circumstances genuinely narrow the class of Defendants eligible for the death penalty does not mean, by corollary, that the class of death eligible defendants must be genuinely narrow.” (State’s response page 3). Actually that is precisely the point of United States death penalty jurisprudence – the modern death penalty was approved beginning in 1976 precisely because every murder case could *not* be characterized as a death case and even consideration of death was limited. *Zant v. Stephens*, 462 U.S. 862, 877 (1983).
6. When the aggravating factors are so broad and have been applied so loosely that they do not limit the class of persons eligible for the death penalty, it is a violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution as well as article I, sections 2, 9, 16, 17, and 22 of the Florida Constitution.

WHEREFORE, the Defendant CASEY MARIE ANTHONY respectfully requests this Honorable Court Declare § 921.141 Unconstitutional Due to its Failure to Narrow the Scope of the Death Penalty.

Respectfully submitted,



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Dated: June 5, 2010

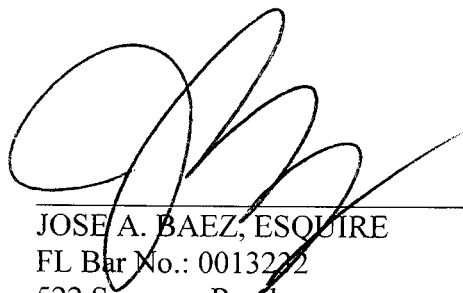
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail, fax and/or hand-delivered to the OFFICE OF STATE ATTORNEY, 415 N. Orange Ave, Orlando, FL 32801 AND to the CLERK OF THE CIRCUIT COURT, 425 N. Orange Avenue, Suite 410 Orlando, FL 32801, this 4th day of June, 2010.

A handwritten signature in black ink, appearing to read 'J. Baez', is written over a horizontal line. The signature is fluid and cursive.

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