

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(5)(H) AND/OR THE STANDARD (5)(H) JURY
INSTRUCTION UNCONSTITUTIONAL FACIALLY AND AS APPLIED**

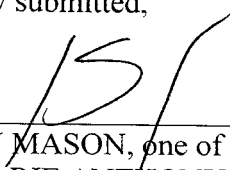
COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through undersigned counsel, and submits this reply to the State’s Response to Defendant’s Motion to Declare § 921.141(5)(h) and/or the Standard (5)(h) Jury Instruction Unconstitutional Facially and as Applied. The defense, and Miss Anthony, state the following:

1. The State cites three Florida Supreme Court cases for the proposition that “[t]his aggravator has withstood constitutional challenge.” See State’s Response to Death Penalty Motions, page 5.
2. In *Mansfield v. State*, 758 So.2d 636, 649 (Fla. 2000), the Florida Supreme Court summarily states that the constitutionality of the § 921.141(5)(h) instruction has previously been addressed and affirmed. No further analysis of the issue is given.
3. In *Chandler v. State*, the Florida Supreme Court again summarily states that the constitutionality of the jury instruction for § 921.141(5)(h) has been held constitutional, citing *James v. State*.

4. In *James v. State*, the Florida Supreme Court rejects a challenge to the standard § 921.141(5)(h) jury instruction, finding that it is the same previously approved by *Hall v. State*, 614 So.2d 473, 478 (Fla. 1993).
5. While the three cases cited by the State continue to affirm the constitutionality of the standard jury instruction for heinous, atrocious, or cruel (HAC), by summarily deferring to previous case law, none of these cited cases substantively address the constitutionality of the aggravator itself.
6. Miss Anthony sets forth, in her above captioned motion and memorandum of law, an extensive survey of how the HAC aggravator is actually applied. This analysis shows that the aggravator itself – irrespective of the instruction given to the jury – cannot be found constitutional due to its vagueness, failure to narrow, and the arbitrary and capricious application of the aggravator that has occurred in Florida since its inception.
7. For the reasons set forth in Miss Anthony’s original motion and memorandum of law, the State should be precluded from using Fla. Stat. § 921.141 (5)(h) as an aggravator to in its quest to execute Miss Anthony.

WHEREFORE, the Defendant CASEY MARIE ANTHONY respectfully requests this Honorable Court to to declare § 921.141(5)(h) unconstitutional and preclude its use in the case at bar.

Respectfully submitted,



J. CHENEY MASON, one of the attorneys for
CASEY MARIE ANTHONY.

151

ANDREA D. LYON, one of the attorneys for
CASEY MARIE ANTHONY.

JOSE A. BAEZ, one of the attorneys for
CASEY MARIE ANTHONY.

5
Dated: June _____, 2010

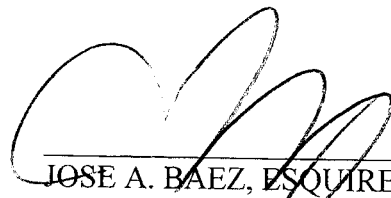
J. Cheney Mason, P.A.
Bank of America Building
390 North Orange Avenue
Suite 2100
Orlando, FL 32801
407-843-5785 (Phone)
407-422-6858 (Fax)

Andrea D. Lyon
Director, Center for Justice in Capital Cases
DePaul University College of Law
25 E. Jackson Blvd., Suite 1050
Chicago, IL 60604
312-362-8294 (Phone)
312-362-6918 (Fax)

Jose A. Baez
The Baez Law Firm
522 Simpson Road
Kissimmee, FL 34744
407-705-2626 (Phone)
407-705-2625 (Fax)

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.



JOSE A. BAEZ, ESQUIRE
FL Bar No.: 0013232
522 Simpson Road
Kissimmee, Florida, 34744
Tel.: (407) 705-2626
Fax.: (407) 705-2625