

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff,

CASE NO: 48-2008-CF-015606-O

DIVISION: 16

vs.

CASEY MARIE ANTHONY
Defendant.

RESPONSE TO DEATH PENALTY MOTIONS

COMES NOW The State of Florida pursuant to this courts order of May 17th 2010 and files its response to seven motions filed by the Defendant attacking various aspects of Florida Statute 921.141. As to all of the Motions that seek to challenge the constitutionality of the statute as applied, the position of the State is that these arguments are premature as the court has yet to take evidence in the case. All as applied objections should be denied at this time with out prejudice. As the motions seek to attack the facial constitutionality of the statute they will be addressed individually.

MOTION TO DECLARE § 921.141 UNCONSTITUTIONAL BECAUSE IT IMPROPERLY SHIFTS BURDENS OF PROOF TO THE DEFENDANT, THEREBY CREATING A PRESUMPTION OF DEATH; MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DECLARE § 921.141 UNCONSTITUTIONAL BECAUSE IT IMPROPERLY SHIFTS BURDENS OF PROOF TO THE DEFENDANT, THEREBY CREATING A PRESUMPTION OF DEATH

The trial court's denial of his motion as been affirmed by the Florida Supreme Court in a number of cases. . Lebron v. State, 982 So.2d 649, 666 (Fla.2008) ;Barnhill v. State, 971 So.2d 106, 117 (Fla.2007) ;Rogers v. State, 957 So.2d 538, 555 (Fla.2007); Reynolds v. State, 934 So.2d 1128, 1151 (Fla.2006).

This Motion should be denied.

MOTION TO DECLARE § 921.141 UNCONSTITUTIONAL DUE TO ITS FAILURE TO NARROW THE SCOPE OF THE DEATH PENALTY; MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DECLARE § 921.141 UNCONSTITUTIONAL DUE TO ITS FAILURE TO NARROW THE SCOPE OF THE DEATH PENALTY

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. 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. As to the felony murder

aggravating circumstance this issue has been determined by the Florida Supreme Court. Blanco v. State 706 So.2d 7 (Fla., 1997). As to CCP the court has determined that the definition, as refined, does genuinely narrow the class of death eligible Defendants and is therefore constitutional. Porter v. State 564 So.2d 1060 (Fla., 1990):

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. This requirement embodies the courts concern that the determination of eligibility be truly guided by the law and not left to the arbitrary and capricious whim of individual jurors.

Furman v. Georgia 408 U.S. 238 (1972). The State is therefore free to determine which classes or varieties of first degree murder warrant the ultimate sanction so long as that determination constitutes real guidance. So long as the aggravating factor has "common sense core meaning ... that criminal juries should be capable of understanding" it is constitutional. Jurek V. Texas 428 U.S. 262 (1976). The fact that the class of Defendants eligible for the death penalty has expanded does not offend the constitution so long as admission requirements are clear and rational.

The expansion of the class, resulting from the addition of F.S. 921.141 (j)-(o), are clear statements of rational public policy which treat more severely certain offenses, based upon the characteristics of the victim or the Defendant.

Circumstances (j) and (k) express a perfectly rational public policy of protecting those empowered by law and charged with the responsibility of ensuring the welfare of the public and are limited in application to circumstance where the murder is related to that function. Circumstance (l) and (m) express the rational public policy of protecting those who by virtue of chronological age or physical infirmity are less able to protect themselves. Far from particularly pernicious, as the Defendant described it, this heightened level of protection is laudable and a consistent feature of any advanced society.

Lastly circumstances (n) and (o) relate to existing defendant classifications and are rationally related to crime prevention and control (though clearly neither has application to this case).

While the admission criteria to the class of death eligible Defendant has expanded the sentencer is not left to make its decision in an arbitrary and capricious manner but rather is guided in that decision by clear, rational and constitutional standards.

MOTION TO DECLARE § 921.141(5)(D) AND/OR THE §921.141(5)(D) STANDARD INSTRUCTION UNCONSTITUTIONAL FACIALLY AND AS APPLIED AND TO PRECLUDE THEIR APPLICATION AT BAR;

The Defendant acknowledges in her motion the holding in Blanco and urges this court to consider the dissenting opinions. The majority opinion constitutes binding precedent on this court that requires that this motion be denied.

MOTION TO DECLARE FLORIDA STATUTES § 921.141(5)(I) UNCONSTITUTIONAL AND TO PRECLUDE ITS USE IN THE PRESENT CASE; MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DECLARE FLORIDA STATUTES § 921.141(5)(I) UNCONSTITUTIONAL AND TO PRECLUDE ITS USE IN THE PRESENT CASE

The decision in Jackson cited by the defendant in her motion resolves the vagueness and narrowing challenges raised by the defendant in this motion. (See also Porter v. State 564 So.2d 1060 (Fla.,1990)). This motion should be denied.

MOTION TO DECLARE FLA. STAT. 921.141(5)(H) AND/OR THE STANDARD (5)(H) JURY INSTRUCTION UNCONSTITUTIONAL FACIALLY AND AS APPLIED; MEMO SUPPORTING MOTION TO DECLARE 921.141(5)(H) AND/OR THE STANDARD (5)(H) JURY INSTRUCTION UNCONSTITUTIONAL FACIALLY AND AS APPLIED

This aggravator has withstood constitutional challenge before the Florida Supreme Court in the following cases, Mansfield v. State 578 So. 2d 636 (Fla. 2000); Chandler v. State, 702 So.2d 186, 201 (Fla.1997), cert. denied, 523 U.S. 1083, 118 S.Ct. 1535, 140 L.Ed.2d 685 (1998); James v. State 695 So.2d 1229, 1235 (Fla.1997). This motion must be denied.

DEFENDANT'S MOTION TO DECLARE § 921.141(5)(L) UNCONSTITUTIONAL FACIALLY AND AS APPLIED, AND TO PRECLUDE ITS USE IN THE CASE AT BAR; MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DECLARE § 921.141(5)(L) UNCONSTITUTIONAL FACIALLY AND AS APPLIED, AND TO PRECLUDE ITS USE IN THE CASE AT BAR

This aggravator has withstood constitutional challenge before the Florida Supreme Court in the following case; Smith v. State 28 So. 3d 838 (Fla. 2010). This motion must be denied.

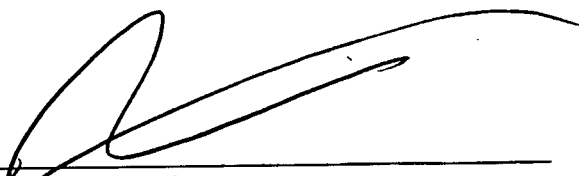
MOTION TO DECLARE § 921.141(5)(M) UNCONSTITUTIONAL FACIALLY AND AS APPLIED; MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DECLARE § 921.141(5)(M) UNCONSTITUTIONAL FACIALLY AND AS APPLIED

The constitutional requirement that the aggravator genuinely narrow the class is addressed by the Court in Francis v. State 808 So. 2d 110 at 138 (Fla.2002). The court goes on to address the phrases in the aggravator “particularly vulnerable” and “advanced age.” and finds that the language is not unconstitutionally vague. While the court did not directly address the issue as it relates to the phrase “familial or custodial authority”, that term is not unique to the capital arena. F.S. 794.011(8) uses identical language in criminalizing certain sexual conduct committed by person with that relationship. A number of cases have discussed the plain reading of those terms and refined it application. Crocker v. State 752 So. 2d 615 (2nd DCA 1999); Hull v. State 686 So. 2d 676 (3rd DCA 1996); Johnson v. State 682 So. 2d (5th DCA 1996).

“In relation to this requirement, the Court explained that the vagueness review of an aggravating circumstance is “quite deferential” and that it is not necessary for an aggravator to be “susceptible of mathematical precision.” *Id.* The Court also added that a “factor is not unconstitutional if it has some ‘common-sense core of meaning ... that criminal juries should be capable of understanding.’ ” Francis at 138. The terms of this aggravator have a common sense meaning that is

a juror would be capable of understanding and is therefore constitutional. This motion should be denied.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to Jose A. Baez, 522 Simpson Road, Kissimmee, FL 34744 on this 26th day of May, 2010.



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