

IN THE DISTRICT COURT OF LINCOLN COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
 -vs-)
)
 JOSHUA D. STUMP,)
)
 Defendant.)

Case No. CF-95-104

FILED
 5/11/95
 Linda Siler, Ct. Clerk, Lincoln Co., Okla.
 Deputy

MOTION TO STRIKE DUPLICITOUS AGGRAVATING CIRCUMSTANCE

The Defendant, Joshua D. Stump, moves to strike certain aggravating circumstances alleged by the State in its Bill of Particulars because the evidence the State will probably rely on to prove these aggravating circumstances overlaps to a great degree. Under the Eighth and Fourteenth Amendments, the State cannot use the same evidence in order to prove separate and distinct aggravating circumstances. As further grounds for this motion, the Defendant shows as follows:

1. In its Bill of Particulars, the State alleges that Defendant is eligible for the death penalty due to three aggravating circumstances. These are: (1) the murder was especially heinous, atrocious, or cruel; (2) the Defendant knowingly created a great risk of death to more than one person; and (3) the existence of probability that the Defendant would commit criminal acts of violence that would constitute a continuing threat to society.

2. It is anticipated that the State will rely, in large part, on the same evidence to prove more than one of the aggravating circumstances alleged. Depending on what evidence, if any, the State urges in support of the "especially heinous, atrocious, or

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cruel" aggravating circumstance, the fact that the murder was committed will doubtless play a part in the State's argument that the "great risk of death" aggravating circumstance has been proved. The only evidence that the State will have to support the continuing threat aggravating circumstance will, again, be the fact that the murder was committed.

3. To the extent that the evidence as to the two aggravating circumstances alleged by the State will overlap to a great degree, Defendant will be denied his Eighth and Fourteenth Amendment rights to an individualized determination as to whether the aggravating circumstances exist, and an individualized determination as to whether the death penalty is appropriate in this case. The State cannot use the same set of facts to prove more than one aggravating circumstance. Such a practice would allow Defendant to in effect be "condemned twice" based on a single set of facts.

WHEREFORE, Defendant asks that the Court strike any duplicitous aggravating circumstance.

AUTHORITY:

Green v. State, 713 P.2d 1032, 1040 (Okla. Cr. 1985);
Griffin v. State, 474 So.2d 777 (Fla. 1985) (murder in the course of robbery and murder for profit aggravating circumstances merge);
Thomas v. State, 456 So.2d 545 (Fla. 1984) (avoid arrest and disruption or hinderance of government are identical aggravating circumstances and cannot be doubled up);
State v. Goodman, 257 S.E.2d 569, 587 (N.C. 1979);
Cooke v. State, 369 So.2d 1231, 1236 (Ala. 1978);
Perry v. State, 395 So.2d 170, 175 (Fla. 1980);
Jurek v. Texas, 428 U.S. 263, 274,
96 S.Ct. 2950, 2957 (1976);
U.S. Const. amends. VIII, XIV.

Respectfully submitted,

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P.O. Box 926
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(405) 329-4272
ATTORNEY FOR JOSHUA D. STUMP

CERTIFICATE OF SERVICE

This is to certify that on this 11th day of January, 1996, a true and correct copy of the above and foregoing instrument was mailed, postage pre-paid, to the office of Miles C. Zimmerman, Lincoln County District Attorney, P.O. Box 126, Chandler, Oklahoma 74834.

James T. Rowan
James T. Rowan

IN THE DISTRICT COURT OF LINCOLN COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
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 Plaintiff,)
 -vs-) Case No. CF-95-104
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 JOSHUA D. STUMP,)
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 Defendant.)

FILED
JAN 12 1996
Linda Slier, Ct. Clerk, Lincoln Co., Okla.
By [Signature] Deputy

DEFENDANT'S LIST OF PRETRIAL MOTIONS
FILED JANUARY 12, 1996

COMES NOW the Defendant and submits the following as his list of pre-trial motions filed in Lincoln County District Court this 12th day of January, 1996:

1. Demurrer and Motion to Quash Information;
2. Notice of Intent to Offer Evidence of Prior Government Admission;
3. Motion in Limine Re: Physical and Forensic Evidence;
4. Motion to Prohibit Jury Dispersal and to Prohibit Jury's Exposure to Victim's Family or Friends;
5. Defendant's Objection to Verdict Form Re: "Continuing Threat";
6. Motion to Strike Unadjudicated Offenses Alleged in Support of "Continuing Threat" Aggravating Circumstance;
7. Motion in Limine Regarding Introduction of Autopsy Photographs;
8. Motion in Limine Re: Caldwell;
9. Motion to Allow Voir Dire on the Cost-effectiveness of the Death Penalty;
10. Motion to Enjoin Victim's Family and/or Victim's Rights Advocates from Showing Emotion in the Courtroom While Sitting as Spectators and Brief in Support Thereof;
11. Motion to Endorse All "Jail House" Informants;

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12. Motion in Invoke Rule Prior to Voir Dire, Prohibit Witnesses from Conversing, and to Enjoin the District Attorney from Advising of Previous Testimony;
13. Motion for Production of Juror List;
14. Motion for Voir Dire on the Death Penalty;
15. Motion to Allow Evidence Re: *Life Without the Possibility of Parole*;
16. Motion to Preclude Prosecution from Using Peremptory Challenges to Exclude Minority Races or Poor Jurors;
17. Motion for Hearing on Reliability of "Jail House" Informants;
18. Objection to Standards of Counsel Imposed by United States Supreme Court and Notice of Non-waiver of Issues and Objections;
19. Defendant's Objection to Standard Jury Instructions Re: Evaluation of Mitigating Evidence;
20. Defendant's Objection to Uniform Jury Instructions Re: Finding of Unanimity with Respect to Mitigating Circumstances;
21. Motion for Additional Peremptory Challenges and Brief in Support Thereof;
22. Motion to Preclude Pretrial Exemption, Pretrial Excusal or Peremptory Excusal of Poor Jurors, or in the Alternative, Quash the Array;
23. Motion for Discovery of Prior Jury Service;
24. Motion for Jury Questionnaire (with attached sample);
25. Brief in Support of Motion to Submit Questionnaire to Prospective Jurors;
26. Motion in Limine Re: Remorse
27. Motion to Prohibit Prosecution from Excluding Potential Jurors who Express Reservations Regarding the Death Penalty and Brief in Support Thereof;
28. Motion to Require the State to Provide Victim Impact Statements Prior to Trial and Request for Evidentiary Hearing and Brief in Support Thereof;
29. Motion for Individual Voir Dire of Jurors as far as the Death Penalty is Concerned;

- 30. Brief in Support of Individual, Sequestered Voir Dire;
- 31. Motion in Limine Re: Purported Qualifications of Tom Bevel;
- 32. Motion to Strike Duplicitous Aggravating Circumstance

Respectfully submitted,

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ATTORNEY FOR JOSHUA D. STUMP

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IN THE DISTRICT COURT OF LINCOLN COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
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Plaintiff,)
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-vs-)
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Defendant.)

Case No. CF-95-104

FILED
JAN 12 1996
Linda Sizer, Ct. Clerk, Lincoln Co., Okla.
By: [Signature] Deputy

DEMURRER AND MOTION TO QUASH INFORMATION

COMES NOW the Defendant and demurrers to the Amended Felony Information because it alleges more than one offense and does not state a public offense.

Respectfully submitted,

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IN THE DISTRICT COURT OF LINCOLN COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
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Plaintiff,)
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-vs-)
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JOSHUA D. STUMP,)
)
Defendant.)

Case No. CF-95-104

FILED
JAN 12 1996
Linda Suter, Cl. Clerk Lincoln Co. Okla.
Deputy

NOTICE OF INTENT
TO OFFER EVIDENCE OF PRIOR GOVERNMENT ADMISSION

COMES NOW the Defendant and gives notice through his attorney that he intends to offer as evidence the original Felony Information filed in this case, dated July 17, 1995, signed and sworn to by Barney K. Barnett, and charging Joshua D. Stump with Murder in the First Degree. In pertinent part, the Felony Information reads as follows:

"... the said Joshua D. Stump [committed] an assault on the said Hubert Moucka and Katrina Knight with a firearm, to-wit: a shotgun used and held by said Robert Anderson... [and]... did kill one Katrina Knight...."

On December 5, 1995, the district attorney filed an Amended Information in which he alleged that Joshua D. Stump used and held the shotgun. While the prosecutor may amend the information, the Defendant is entitled to introduce evidence that at one time the government believed and stated that Robert Anderson killed Katrina Knight with the shotgun.

12 O.S. § 2801(4)b (1) and (2) provides, "A statement is not hearsay if: the statement is offered against a party and is (1) the party's own statement, in either an individual or a representative capacity, or (2) a statement of which the party has manifested an adoption or belief in its truth...." There can be no doubt that the State of Oklahoma is a party-opponent to

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the defendant in a criminal case. The prosecutor, Barney Barnett, represented the State of Oklahoma when he filed the Verified Felony Information charging Joshua Stump with murder, but alleging in the Information that he acted in concert with Robert Anderson, who used and held the shotgun when he killed Katrina Knight.

In United States v. GAF Corporation, 928 F.2d 1253 (2d cir.1991), the defendants moved unsuccessfully to admit the government's original Bill of Particulars which was different from a later version upon which the government relied at trial. The appellate court reversed:

The same considerations of fairness and maintaining the integrity of the truth-seeking function of trials that led this Court to find that opening statements of counsel and prior pleadings constitute admissions also require that a prior inconsistent bill of particulars be considered an admission by the government in an appropriate situation. Although the government is not bound by what it previously has claimed its proof will show any more than a party which amends its complaint is bound by its prior claims, the jury is at least entitled to know that the government at one time believed, and stated, that its proof established something different from what it currently claims. Confidence in the justice system cannot be affirmed if any party is free, wholly without explanation, to make a fundamental change in its version of the facts between trials, and then conceal this change from the final trier of the facts.

CONCLUSION

Barney Barnett, as an assistant district attorney, acted as a representative of the State of Oklahoma, a party opponent of the defendant, when he signed, swore to, and filed a felony information July 17, 1995. He may change his mind as did the state's witness at preliminary hearing, but the jury, in fairness, is entitled to hear and judge this change in the facts.

Respectfully submitted,

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IN THE DISTRICT COURT OF LINCOLN COUNTY

STATE OF OKLAHOMA

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Plaintiff,)
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-vs-)
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Defendant.)

Case No. CF-95-104

FILED
JAN 12 1996
8:55 AM
Lincoln Star, Cr City Lincoln Co. Okla.
By [Signature] Deputy

MOTION IN LIMINE RE: PHYSICAL AND FORENSIC EVIDENCE

The Defendant moves this Court to enter an order precluding the State from introducing the following findings, results, speculations, or conclusions respecting the forensic and physical evidence in this case:

1. Any opinion from a serologist, hair examiner, medical examiner, blood spatter analyst, or other purported forensic science expert to the effect that Defendant was present and conscious when violence was done to the victim, or was otherwise involved in or guilty of the crime charged on the grounds this evidence is prejudicial, incompetent, misleading, invades the province of the jury, is speculation and not opinion, is based on facts not normally relied upon by similar experts, is based upon strictly inadmissible hearsay, and cannot be arrived at in light of the current limitations of forensic science. 12 O.S. §§ 2403, 2702-2704, 2801-2803; McCarty v. State, 765 P.2d 1215 (Okl. Cr. 1988); United States v. Varoz, 740 F.2d 772 (10th Cir. 1984).

2. Testimony which purports to give a statistical probability of guilt, or a statistical probability that evidence which came from Defendant is likewise inadmissible for the reasons stated above. 12 O.S. §§ 2402, 2403; 2702-2704; 2801-2803.

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3. Any testimony from the Medical Examiner that the victim suffered conscious pain and suffering on the grounds said Medical Examiner cannot determine whether the victim was conscious when killed, and, additionally, any testimony from said Medical Examiner concerning the length of time the victim was alive after being attacked as the Medical Examiner does not know with certainty how long the victim lived for all the grounds cited in paragraphs #1 and #2 of this motion. 12 O.S. §§2402-2403; 2702-2705; 2801-2803; Stouffer v. State, 738 P.2d 1349 (Okl. Cr. 1987), on rehearing, 742 P.2d 562 (Okl. Cr. 1987), cert. denied, 108 S.Ct. 763 (1988).

4. All of the above evidence is also inadmissible due to its lack of scientific reliability, the lack of an honest opportunity to cross-examine witnesses on this alleged "expert testimony", the likelihood it will lead to an unreliable sentence, and because it lacks fairness and would deprive the Accused of due process of law. 6th, 8th, and 14th Amends., U.S. Const., Art. II, §§ 7 and 9, Okla. Const.

5. Defendant prays for an in camera hearing on this evidence, and further, for an order from this Court prohibiting the State from discussing or offering this evidence until its admissibility is determined by the Court. 12 O.S. § 2105.

WHEREFORE, Defendant prays for the relief requested herein.

Respectfully submitted,

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