

IN THE DISTRICT COURT OF THE TWENTY-THIRD JUDICIAL DISTRICT  
SITTING WITHIN AND FOR LINCOLN COUNTY  
STATE OF OKLAHOMA

The State of Oklahoma, )  
)  
Plaintiff, )  
)  
vs. )  
)  
Joshua D. Stump, )  
)  
Defendant. )

CF-95-104

FILED  
FEB 23 1996  
12:51 PM  
Linda Siler, Ct. Clk., Lincoln Co. Okla.  
By [Signature] Deputy

STATE'S SECOND RESPONSE TO DEFENDANT'S MOTIONS

COMES NOW the State of Oklahoma, by and through Barney K. Barnett, Assistant District Attorney, and responds to the defendant's motions as follows:

Motion for Hearing on Reliability of "Jail House" Informants"

The State has endorsed no "jail house" informants as witnesses in either the State's first or second stage cases in chief, and therefore asks that this motion be overruled.

Objection to Standards of Counsel Imposed by United States Supreme Court and Notice of Non-waiver of Issues and Objection:

The State asserts that the manner of conducting voir dire is within the discretion of the court. Fox v. State, 779 P2d 562 (Okl.Cr. 1989).

Defendant's Objection to Uniform Jury Instructions Re: Evaluation of Mitigating Evidence:

This argument was considered and rejected in Mitchell v. State, 884 P2d 1186 (Okl.Cr. 1994). The State requests this motion be overruled.

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Defendant's Objection to Uniform Jury Instructions Re: Finding of Unanimity with Respect to Mitigating Circumstances:

This argument was considered and rejected in Mitchell v. State, 884 P2d 1186 (Okla. Cr. 1994). The State requests this motion be overruled.

Motion for Additional Peremptory Challenges and Brief in Support Thereof:

Any juror who is tainted or biased can be challenged for cause (22 O.S. § 651 et. seq.). Both parties are entitled by statute to 9 peremptory challenges (22 O.S. § 631 et. seq.). Additional peremptory challenges are not authorized by statute, and would not of necessity redress the wrongs of which counsel prematurely and clairvoyantly complains.

Motion to Preclude Pretrial Exemption, Pretrial Excusal or Peremptory Excusal or Poor Jurors, or in the Alternative, Quash the Array:

These matters are vested in the sound discretion of the court. The State requests this motion be overruled.

Motion for Discovery of Prior Jury Service:

The District Attorney's Office does not maintain a listing of previous jurors "track records" and requests this motion be overruled.

Motion for Jury Questionnaire (with attached sample):

The State agrees that an expanded questionnaire may be beneficial but that defendant's proposed questionnaire is overbroad and contains non-relevant questions. The State requests that an approved questionnaire be submitted to all jurors.

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Brief in Support of Motion to Submit Questionnaire to Prospective Jurors:

The State agrees that an expanded questionnaire may be beneficial but that defendant's proposed questionnaire is overbroad and contains non relevant questions. The State requests that an approved questionnaire be submitted to all jurors.

Motion in Limine Re: Remorse:

Defendant's position is that remorse for this crime is not necessary because he "didn't do it". The State would reserve the right to explore this issue should it be raised by Defendant or for the purpose of impeachment.

Motion to Prohibit Prosecution from Excluding Potential Jurors who Express Reservations Regarding the Death Penalty and Brief in Support Thereof:

The State is aware of the holding in Witherspoon. There is no authority for Defendant's position that the State justify its peremptory challenges or to set forth a "non expressed reservation about the death penalty" explanation as in Batson. Challenges for cause are still determined by the court. This motion should be denied.

Motion to Require the State to Provide Victim Impact Statements Prior to Trial and Request for Evidentiary Hearing and Brief in Support Thereof:

This evidence is specifically allowed under Oklahoma law by 21 O.S. § 701.10. These statements will be provided as required by statute.

Motion for Individual Voir Dire of Jurors as far as the Death Penalty is Concerned:

The State asserts that the manner of conducting voir dire is within the discretion of the court. Fox v. State, 779 P2d 562 (Okl.Cr. 1989).

Brief in Support of Individual, Sequestered Voir Dire:

The State asserts that the manner of conducting voir dire is within the discretion of the court. Fox v. State, 779 P2d 562 (Okl.Cr. 1989).

Motion in Limine Re: Purported Qualifications of Tom Bevel:

Qualification and testimony of expert witnesses is address in 12 O.S. § 2702 et. seq.. References to Mr. Bevel's qualifications, should he testify, will comply with what is subject to proof. The weight given to evidence offered by the "State's Expert" or the "Defense Expert" is left to the jury. The State requests this motion be denied.

Motion to Strike Duplicitous Aggravating Circumstances:

Defendant cites no authority for the proposition that the same evidence may not support more than one aggravating circumstance. This is clearly not the law and the State requests this motion be overruled.

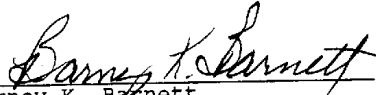
Motion to Strike "Continuing Threat" Aggravating Circumstance as Unconstitutional and on Grounds of Insufficient Evidence and Brief in Support:

The State asserts that this is a "boilerplate" motion that rehashes arguments consistently rejected by the Oklahoma Court of Criminal Appeals see Mitchell v. State, 884 P2d 1186 (Okl.Cr.

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1994). The only relationship to the Defendant in this case and this motion is that his name appears in appropriate "blanks". It is requested that this motion be denied.


Respectfully Submitted,

  
Barney K. Barnett,  
Assistant District Attorney  
Lincoln County Courthouse  
Chandler, OK 74834  
(405) 258-1674

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CERTIFICATE OF DELIVERY

This is to certify that on the 23rd day of February, 1996, a true and correct copy of the above and foregoing Response was delivered to James Rowan, Attorney for Defendant at the Lincoln County Courthouse.

  
Barney K. Barnett

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IN THE DISTRICT COURT OF THE TWENTY-THIRD JUDICIAL DISTRICT  
SITTING WITHIN AND FOR LINCOLN COUNTY  
STATE OF OKLAHOMA

The State of Oklahoma, )  
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 Plaintiff, )  
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 vs. )  
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 Joshua D. Stump, )  
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 Defendant. )

CF-95-104

FILED

FEB 23 1996

12:50 PM  
Linda Siler, Clk. Lincoln Co. Okla.  
By [Signature] Deputy

STATE'S RESPONSE TO DEFENDANT'S MOTIONS

COMES NOW the State of Oklahoma, by and through Barney K. Barnett, Assistant District Attorney, and responds to the defendant's motions as follows:

Demurrer and Motion to Quash Information:

The Information complies with 22 O.S. §§ 493 through 500 and §§ 504 through 508. The State asks that this motion be overruled.

Notice of Intent to Offer Evidence of Prior Government Admission:

The State requests that this motion be denied. The Information itself is never admitted as evidence against the Defendant. Defense counsel may explore this issue with other State witnesses. If this motion is granted the State requests a limiting/explanatory contemporaneous instruction.

Motion in Limine Re: Physical and Forensic Evidence:

The defendant in this motion makes reference to imagined harm, which is speculative at best. The State is aware of the provisions of the Oklahoma Evidence Code relating to the admissibility of

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expert testimony, and also of the applicable case law. The State asks that the Court make the appropriate rulings regarding the admission of any expert testimony at the time such evidence is offered.

Motion to Prohibit Jury Dispersal and to Prohibit Jury's Exposure to Victim's Family or Friends:

The control of the conduct and behavior of courtroom spectators is a proper function of the trial court and the State will make every effort to ensure that all spectators comply with all rulings of the court. (22 O.S. § 853, 854).

Defendant's Objection to Verdict Form Re: "Continuing Threat":

The Court of Criminal Appeals has ruled on numerous occasions that this aggravating circumstance is specific, not vague, and is readily understandable. Boltz v. State, 806 P2d 1117 (Okl.Cr. 1991), Van Wounderberg v. State, 720 P2d 328 (Okl.Cr. 1986), Liles v. State, 702 P2d 1025 (Okl.Cr. 1985). The Court has also determined that it is not being evaluated in an arbitrary manner, Foster v. State, 714 P2d 1031 (Okl.Cr. 1986). See also Jurek v. Texas, 428 U.S. 262 (1976) and Mitchell v. State, 884 P2d 1186 (Okl.Cr. 1994). The State asks that this motion be overruled.

Motion to Strike Unadjudicated Offenses Alleged in Support of "Continuing Threat" Aggravating Circumstance:

The Oklahoma Court of Criminal Appeals has consistently held that the "continuing threat" aggravator . . . "may be proved by prior convictions, unadjudicated crimes, or the circumstances of the crime for which the defendant is on trial." Mitchell v. State, 884 P2d 1186 (Okl.Cr. 1994). The State requests this motion

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be denied.

Motion in Limine Regarding Introduction of Autopsy Photographs:

The State has no desire to introduce grisly photographs solely to inflame the jury. However, the State is required to prove the elements of the offense, and will offer photographs of the body of Katrina Knight to show the type, location and number of wounds. The State asks that this motion be overruled.

Motion in Limine Re: Caldwell:

The State is aware of the restriction imposed by Caldwell and will condition remarks regarding the death penalty accordingly.

Motion to Allow Voir Dire on the Cost-effectiveness of the Death Penalty:

In his brief in support of this motion, counsel cites Lockett v. Ohio, 438 U.S. 586 (1978), for the proposition that the defendant in a capital case may admit into evidence "any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant offers as a basis for a sentence less than death." It is the position of the State that the monetary cost of capital punishment, in the abstract, clearly falls outside this area. In Nguyen v. State, 769 P2d 167 (Ok1.Cr. 1988), the Court of Criminal Appeals found no error when the trial court refused to admit evidence in the second stage concerning parole policy. This specific issue was also reviewed in Mitchell, supra where the court declined to expand mitigation evidence to include this ". . . moral/economic argument." The State asks that this motion be overruled.

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Motion to Enjoin Victim's Family and/or Victim's Rights Advocates from Showing Emotion in the Courtroom While Setting as Spectators and Brief in Support Thereof:

The control of the conduct and behavior of courtroom spectators is a proper function of the trial court and the State will make every effort to ensure that all spectators comply with all rulings of the court. (22 O.S. § 853, 854).

Motion to Endorse All "Jail House" Informants:

The State has endorsed no "jail house" informants as witnesses in either the State's first or second stage cases in chief, and therefore asks that this motion be overruled.

Motion to Invoke Rule Prior to Voir Dire, Prohibit Witnesses from Conversing, and to Enjoin the District Attorney from Advising of Previous Testimony:

The State has admonished the witnesses in this case not to discuss their testimony with other witnesses, and not to listen to or observe proceedings in court while the witness is not testifying, per 12 O.S. § 2615. The State will continue to do so, and will advise all witnesses to comply with all orders and rulings of the court.

Motion for Production of Juror List:

The District Attorney's Office does not maintain a listing of "information" concerning potential jurors and requests this motion be denied.

Motion for Voir Dire on the Death Penalty:

The State asserts that the manner of conducting voir dire is within the discretion of the court. Fox v. State, 779 P2d 562

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(Okla. Cr. 1989).

Motion to Allow Evidence Re: Life Without the Possibility of Parole:

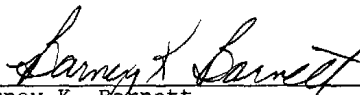
The exclusion of this identical sort of evidence was raised in an assignment of error in Sellers v. State, 809 P2d 676 (Okla. Cr. 1991). The Court of Criminal Appeals rejected the admissibility of evidence of Pardon and Parole as being "patently frivolous" in light of well settled case law, citing Miller v. State, 751 P2d 733 (Okla. Cr. 1988) and Wright v. State, 617 P2d 1354 (Okla. Cr. 1979).

Motion to Preclude Prosecution from Using Peremptory Challenges to Exclude Minority Races or Poor Jurors:

The State is aware of the strictures of Batson and its progeny, and intends to comply with the law. Batson, however, has not been extended to encompass "poor" persons.

"Poor" is not a suspect class nor is economic status related to sex, race, gender, national origin or religious faith. There is no basis in law or fact for the proposition that poor persons are excluded from juries or that the defendant has a right to have poor persons on a jury.

Respectfully Submitted,


  
Barney K. Barnett,  
Assistant District Attorney  
Lincoln County Courthouse  
Chandler, OK 74834  
(405) 258-1674

MICROFILM ROLL#

452-5116

CERTIFICATE OF DELIVERY

This is to certify that on the 23rd day of February, 1996, a true and correct copy of the above and foregoing Response was delivered to James Rowan, Attorney for Defendant at the Lincoln County Courthouse.

  
Barney K. Barnett

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