

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA

VS.

CASE NO.: 2012-001083-CFA
SA NO: 1712F04573

GEORGE ZIMMERMAN
_____ /

**STATE'S MOTION IN LIMINE REGARDING OPINION AS TO APPROPRIATE
PENALTY OR DISREGARD OF LAW**

The State of Florida, by and through the undersigned Assistant State Attorney, hereby moves this Honorable Court for an Order governing forthcoming trial proceedings in the instant case. In support of the instant Motion, the State submits the following:

(1) Defendant may attempt to introduce evidence, testimony, questioning, or other reference regarding the possible punishment Defendant is facing.

(2) **The opinion of any attorney or witness as to the appropriate punishment for any defendant is not a matter properly placed before the jury** in the instant case. "The purpose of Rule 3.390(a) is to minimize the possibility of jury sympathy based on the defendant's potential sentence, and to control the jury's exercise of its pardon power to ensure that the jury decides a case according to the law and the evidence presented, rather than the consequences of its verdict." Knight v. State, 919 So.2d 628 (Fla. 3rd DCA 2006).

“Where the trial judge cannot charge the jury on penalties, it is also improper for counsel to refer to penalties during closing argument[.]” Legette v. State, 718 So.2d 878, 880 (Fla. 4th DCA 1998). For example, informing the jury that Defendant has been in custody prior to or pending trial, where such fact is not relevant to any charge or defense, is merely an attempt to engender sympathy. “A jury that returns a verdict contrary to the evidence based on feelings of prejudice, bias, or sympathy is an outlaw jury, and its verdict will be a miscarriage of justice. . . [t]o allow counsel to inject the length of sentence into closing argument is contrary to the policy. . . that the jury should decide a case in accordance with the law and the evidence and disregard the consequences of its verdict.” *Id.* at 881(emphasis supplied).

(3) The State would be irretrievably prejudiced by the injection of such irrelevant evidence.

(4) In addition, any such references would be far more prejudicial and confusing to the jury than warranted by their limited probative value of the issues in the instant case.

(5) **Defendant further should be prohibited from insinuating that any juror should disregard the law.** Harding v. State, 736 So.2d 1230 (Fla. 2d DCA 1999). **As a matter of law, “A defendant has no entitlement to an aberrant jury– “the luck of a lawless decisionmaker,”** and therefore no entitlement to argue for, request, or even imply that a jury possesses the power to pardon Defendant. Sanders v. State, 946

So.2d 953, 958 (Fla. 2006), quoting Strickland v. Washington, 466 U.S. 668, 695 (1984).

“By definition, jury pardons violate the oath jurors must take before trial, as well as the instructions the trial court gives them.” *Id.*

The purpose of Rule 3.390(a) is to minimize the possibility of jury sympathy based on the defendant's potential sentence, and to control the jury's exercise of its pardon power to ensure that the jury decides a case according to the law and evidence presented, rather than the consequences of its verdict. Knight v. State, 919 So.2d 628, 634 (Fla. 3d DCA 2006) (citing Legette v. State, 718 So.2d 878, 880-81 (Fla. 4th DCA 1998)). Rule 3.390(a) explains that the penalty is irrelevant to the jury's sole responsibility of determining a defendant's guilt or innocence, that the jury cannot be privy to the myriad factors which must be considered in sentencing, and that the court's advising the jury of the possible penalty is wholly inconsistent with the jury's responsibility to disregard the consequences of its verdict and tends to encourage a deplorable phenomenon which has come to be referred to as a “jury pardon.” In Re Amendment to Rules of Criminal Procedure 3.390(a), 416 So.2d 1126, 1127 (Fla.1982) (Alderman, J., dissenting) (explaining the rationale for the version of Rule 3.390(a) that would eventually be adopted in 1985). The challenged instruction appropriately reiterates the evolving policy of removing from a noncapital jury any knowledge of potential penalties for the crimes with which a defendant is charged. Broughton v. State, 790 So.2d 1118, 1119 (Fla. 2d DCA 2001) (emphasis added). The purpose of Rule 3.390(a) is to ensure that a non-capital jury does not concern itself with a defendant's potential sentence. To advise the jury that the judge's sentencing discretion may be constrained by an act of the legislature impermissibly oversteps the boundaries of Rule 3.390(a) and *Broughton*, supra.

State v. Davis, 1D12-5627, 2013 WL 1458683 (Fla. 1st DCA Apr. 11, 2013).

WHEREFORE, the state requests this Honorable Court prohibit mention by counsel or Defendant in any form of the above-referenced matters.

CERTIFICATE OF SERVICE

I HERBY CERTIFY that a copy of the foregoing has been furnished by email to Mark O'Mara, Esq., Don West, Esq., this 10th day of May, 2013.

ANGELA B. COREY
STATE ATTORNEY

By: 

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