IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff,

CASE NO: 23-CF-2935

v.

TOMASZ KOSOWSKI,
Defendant,
_____/

MOTION IN LIMINE PRECLUDING IMPROPER PENALTY PHASE ARGUMENT

The Defendant, by and through his undersigned attorney, moves this Court for an Order requiring, among other things, that the prosecuting attorney be advised, ordered, and not allowed to use improper penalty phase arguments, and as grounds therefore states:

1. The Defendant is charged with First Degree Capital Murder. The State, to date, has indicated that it intends to seek imposition of the death penalty upon conviction of First-Degree murder.

2. The Defendant has been declared indigent.

MEMORANDUM OF LAW

Closing argument, in general, "must not be used to inflame the minds and passions of the jurors so that their verdict reflects an emotional response to the crime or the defendant rather than the logical analysis of the evidence in light of the applicable law." *Adams v. State,* 192 So. 2d 762 (Fla. 1966).

Rhodes v. State, 547 So. 2d 1201 (Fla. 1989). In this case the prosecutor stated that the defendant acted like a "vampire" when he committed the homicides in Florida and in other jurisdictions. There was no evidence in the records to support this contention. The prosecutor also urged the jury to show Rhodes "the same mercy he showed to the victim on the day of her

death." The Court felt that this was an argument that appealed to the sympathies of the jurors and was calculated to inflame their passion. *See also Kearse v. State,* 756 So. 2d 266 (Fla. 2000). Where, during opening argument, the prosecutor stated that Kearse "wants to live, even though he denied that right to Officer Parrish" and urged the jury to show "this defendant the same mercy he showed Officer Parrish." The Supreme Court found these comments to be error.

Richardson v. State, 604 So. 2d 1107 (Fla. 1992). In this case, once again, a prosecutor asked the jury to show the defendant the same pity and mercy as the defendant had shown his victim. Court reiterated this type of argument is error.

Hodges v. State, 595 So. 2d 929 (Fla. 1992). Prosecutor in closing stated: "What about life imprisonment? What can a person do in jail for life? You can cry. You can read. You can watch TV. You can listen to the radio. You can talk to people. In short, you are alive. People want to live. You are living. Alright? If she had had a choice between spending life in prison or lying on that pavement in her own blood, what choice would she have made? But, you see she didn't have that choice. Now why? Because George Michael Hodges decided for himself, for himself that she should die. And for making that decision, for making that decision, he too deserves to die." Court found this appeal to the jurors' emotions to be inflammatory and error. *See also* the almost identical argument in *White v. State,* 616 So. 2d 21 (Fla. 1993).

Jackson v. State, 522 So. 2d 802 (Fla. 1988). Prosecutor commented during closing argument in phase two that the victims could no longer read books, visit their families, or see the sun rise in the morning, as the defendant would be able to do if he was sentenced to life imprisonment. Florida Supreme Court found that it was improper for a prosecutor to urge such considerations as these factors were outside the scope of the jury's deliberations.

Taylor v. State, 583 So. 2d 323 (Fla. 1991). Here the prosecutor gave almost the same

closing argument as in *Hodges*. "But what about life in jail? What can you do in jail? You can laugh, you can cry, you can eat, you can read, you can watch TV, you can participate in sports, you can make friends In short, you live to find out about the wonders of the future. In short, it is living. People want to live.....If Geraldine Burch had the choice of life in prison or being in that dugout with every one of her organs damaged, her vagina damaged, what choice would Geraldine Burch have made? People want to live... See, Geraldine Burch didn't have that choice because this man right here, Perry Taylor, decided for himself that Geraldine Burch should die. And for making that decision he too deserves to die" The Florida Supreme Court found that the prosecutor had overstepped the bounds of proper argument, just as they did in *Hodges*.

Garron v. State, 528 So. 2d 353 (Fla. 1988). Here prosecutor implied that the victim herself wanted the death penalty. "If Le Thi were here, she would probably argue the defendant should be punished for what he did . . . Ladies and gentlemen, I believe at this point, I would hope at this point, that the jurors will listen to the screams and to her desires for punishment for defendant and ask that you bring back a recommendation that will tell the people for her, that will deter people from permitting . . ." Florida Supreme Court found that the prosecutor's comments were egregious.

Urbin v. State, 714 So. 2d 411 (Fla. 1998). The Supreme Court noted that the prosecutor's argument comprised approximately thirty-three transcribed pages and was full of "emotional fear" and efforts to dehumanize and demonize the defendant. Prosecutor used the word "executed" or "executing" at least nine times; described Urbin as a "cold-blooded killer"; a "ruthless killer"; stated several times that Urbin's offenses exhibited "deep-seated violence. It's vicious. It's brutal violence"; stated that he was "violent to the core, violent in every atom of his body"; claimed that his offenses were the "coldest violence most people have ever encountered"; and stated that

Urbin showed his "true, violent, and brutal and vicious character" in committing the murder. Such dehumanizing comments were improper in a prosecutor's closing argument in a death penalty case. The Court went further on to note that the prosecutor improperly concluded his argument by stating "if you are tempted to show this defendant mercy, if you are tempted to show him pity, I'm going to ask you to do this, to show him the same amount of mercy, that same amount of pity that he showed Jason Hicks on September 1, 1995, and that was none."

Brooks v. State, 762 so. 2d 879 (Fla. 2000). Here the Court said that the prosecutor's emotional portrayal of the victim's death had only a "slight emotional flow," and was not as bad as in *Urbin*, because his statements were "properly confined to inferences based on record evidence." The prosecutor had argued that the victim had been "shot like a rabid dog on the driveway", that he "fell down to this cold cement, life flowed out of him"; "blood flowed onto that cold concrete." *Brooks* reversed, however, for other improper arguments that appealed to emotion and fear: repeating the word "executed" multiple times, and repeatedly characterizing the defendant as violent, brutal and vicious.

King v. State, 623 So. 2d 486 (Fla. 1993). During closing argument at the penalty phase, the prosecutor argued that jurors "would be cooperating with evil and would themselves be involved in evil just like" King if they recommended life imprisonment. The court said this was improper, because closing argument "must not be used to inflame the minds and passions of the jurors so that their verdict reflects an emotional response to the crime or the defendant." Furthermore, if "comments in closing argument are intended to and do inject elements of emotion and fear into the jury's deliberations, a prosecutor has ventured far outside the scope of proper argument."

Muhammad v. State, 782 So. 2d 343 (Fla. 2001). In guilt phase the prosecutor argued:

"The victim of the crime is not here to speak because he is dead, but had he survived and if he was asked to come in and tell you his perception of what happened to him and what he saw and who did it to him against the backdrop of fear and the anger and the terror." The court held that argument, whether made in guilt phase or penalty phase, was improper, even though less egregious than the comments in ***Urbin***.

WHEREFORE, the Defendant, through his undersigned attorney, moves this Court for an Order requiring, among other things, that the prosecuting attorney be advised, ordered, and not allowed to use improper penalty phase arguments.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via electronic submission to the Office of the State Attorney on this 29th day of January, 2026.

Respectfully submitted,

/s/Daniel M. Hernandez
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