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23-0293SCF

**FINAL INSTRUCTIONS IN PENALTY PROCEEDINGS — CAPITAL
CASES**

Members of the jury, you have heard all the evidence and the argument of counsel. Now you must decide whether the defendant should be sentenced to life in prison without the possibility of parole or to death.

In making your decision, you must first unanimously determine whether the aggravating factor[s] alleged by the State have been proven beyond a reasonable doubt. An aggravating factor is the only circumstance recognized by Florida law that could result in a defendant receiving the death penalty. An aggravating factor increases the gravity of a crime or the harm to a victim beyond the harm inherent in every First Degree Murder. You must not consider any other facts as an aggravating factor other than what has been alleged and proven by the State beyond a reasonable doubt.

The aggravating factor[s] alleged by the State are:

- 1. The First Degree Murder was committed for financial gain.**
- 2. The First Degree Murder was especially heinous, atrocious or cruel.**

“Heinous” means extremely wicked or shockingly evil.

“Atrocious” means outrageously wicked and vile.

“Cruel” means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others.

The kind of crime intended to be included as especially heinous, atrocious, or cruel is one accompanied by additional acts that show that the crime was conscienceless or pitiless and was unnecessarily torturous to Steven Cozzi.

- 3. The First Degree Murder was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification.**

“Cold” means the murder was the product of calm and cool reflection.

“Calculated” means having a careful plan or prearranged design to commit murder.

A killing is “premeditated” if it occurs after the defendant consciously decides to kill. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

However, for this aggravating factor to apply, a heightened level of premeditation, demonstrated by a substantial period of reflection, is required.

A “pretense of moral or legal justification” is any claim of justification or excuse that, though insufficient to reduce the degree of murder, nevertheless rebuts the otherwise cold, calculated, or premeditated nature of the murder.

You have heard evidence about the impact of this murder on the family, friends and community of Steven Cozzi. This evidence was presented to show the victim’s uniqueness as an individual and the resultant loss by Steven Cozzi’s death. However, you may not consider this evidence as an aggravating factor.

The State has the burden to prove an aggravating factor beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all doubt. A reasonable doubt is not a mere possible doubt, a speculative, imaginary, or forced doubt. Such a doubt must not influence you to disregard an aggravating factor if you have an abiding conviction that it exists. On the other hand, if, after carefully considering, comparing, and weighing all the evidence, you do not have an abiding conviction that the aggravating factor exists, or if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the aggravating factor has not been proved beyond a reasonable doubt.

A reasonable doubt as to the existence of an aggravating factor may arise from the evidence, a conflict in the evidence, or the lack of evidence. If you have a reasonable doubt as to the existence of an aggravating factor, you

must find that it does not exist. However, if you have no reasonable doubt, you should find the aggravating factor does exist.

A finding that an aggravating factor exists must be unanimous, that is, all of you must agree that each alleged aggravating factor exists. You will be provided a form to make this finding [as to each alleged aggravating factor] and you should indicate whether you find each aggravating factor has been proven beyond a reasonable doubt.

If you do not unanimously find that at least one aggravating factor was proven by the State beyond a reasonable doubt, then the defendant is not eligible for the death penalty, and your deliberations are complete.

If, however, you unanimously find that at least one aggravating factor[s] [has] been proven beyond a reasonable doubt, then the defendant is eligible for the death penalty, and you must consider additional matters to determine whether the appropriate penalty should be life in prison without the possibility of parole or death.

First, each of you must determine whether any mitigating circumstances exist. A mitigating circumstance is not limited to the facts surrounding the crime. A mitigating circumstance may include any aspect of the defendant's character, background, or life, or any circumstance of the offense that may indicate the death penalty is not appropriate in this case.

It is the defendant's burden to prove that one or more mitigating circumstances exist. Mitigating circumstances need not be proven beyond a reasonable doubt. Instead, the defendant need only prove a mitigating circumstance by the greater weight of the evidence, which means evidence that more likely than not tends to establish the existence of a mitigating circumstance. If you determine by the greater weight of the evidence that a mitigating circumstance exists, you must consider it proven and give that evidence such weight as you determine it should receive. You need not reach a unanimous decision about whether the defendant has proven the existence of a mitigating circumstance. Any juror persuaded as to the existence of a mitigating circumstance must consider it in this case.

Among the mitigating circumstances you may consider are:

Give only those mitigating circumstances for which evidence has been presented.

1. (Defendant) has no significant history of prior criminal activity.

If the defendant offers evidence on this circumstance and the State, in rebuttal, offers evidence of other crimes, also give the following:

Conviction of (previous crime) is not an aggravating factor to be considered in determining the penalty to be imposed on the defendant, but a conviction of that crime may be considered by the jury in determining whether the defendant has a significant history of prior criminal activity.

2. The First Degree Murder was committed while (defendant) was under the influence of extreme mental or emotional disturbance.
3. (Decedent) was a participant in (defendant's) conduct or consented to the act.
4. (Defendant) was an accomplice in the First Degree Murder committed by another person and [his] [her] participation was relatively minor.
5. (Defendant) acted under extreme duress or under the substantial domination of another person.
6. The capacity of (defendant) to appreciate the criminality of [his] [her] conduct or to conform [his] [her] conduct to the requirements of law was substantially impaired.
7. (Defendant's) age at the time of the crime.

The judge should also instruct on any additional mitigating circumstances as requested.

8. The existence of any other factors in (defendant's) character, background, or life or the circumstances of the offense that would mitigate against the imposition of the death penalty.

The final step in the process is for the jury to determine whether the defendant should be sentenced to life in prison without the possibility of parole or to death. In making your decision, you must weigh all of the following factors:

- (1) whether sufficient aggravating factors exist;

and,

- (2) whether the proven aggravating factor[s] outweigh the proven mitigating circumstances.

The process of weighing aggravating factors and mitigating circumstances is not a mechanical or mathematical process. In other words, you should not merely total the number of aggravating factors and compare that number to the total number of mitigating circumstances. The law contemplates that different factors or circumstances may be given different weight or values by different jurors. Therefore, in your decision-making process, each individual juror must decide what weight is to be given to a particular aggravating factor or mitigating circumstance. Regardless of the results of each juror's individual weighing process—even if you conclude that [a] [the] sufficient aggravator[s] outweigh[s] the mitigator[s]—the law neither compels nor requires you to recommend that the defendant should be sentenced to death.

If fewer than 8 jurors vote for the death penalty, the Court must sentence the defendant to life in prison without the possibility of parole.

If 8 or more jurors vote for the death penalty, your recommendation must be for the death penalty. This recommendation is not binding on the Court. However, I am required to assign and give great weight and deference to your recommendation.

You will be provided [a form] [forms] to reflect your decisions. The fact that the jury can make its decision on a single ballot should not influence you to act hastily or without due regard to the gravity of these proceedings. Before you vote, you should carefully consider and weigh the evidence, realizing that a human life is at stake, and bring your best judgment to bear in reaching your decisions.