

**IN THE CIRCUIT COURT,  
SEVENTH JUDICIAL CIRCUIT,  
IN AND FOR FLAGLER COUNTY, FLORIDA**

**CASE NO.: 07-00033-CFFA**

**STATE OF FLORIDA**

**VS.**

**CORNELIUS OZELL BAKER  
DEFENDANT.**

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**STATE' S MOTION FOR CONTINUANCE, OR TO HOLD IN ABEYANCE**

The State of Florida, by and through the undersigned Assistant State Attorney, pursuant to Rule 3.190(f), Florida Rules of Criminal Procedure, moves that this Honorable Court grant a continuance in the penalty phase proceedings, or alternatively, to hold this matter in abeyance pending further litigation. In support of this request, the State would show the following grounds:

1. On March 23, 2017, the Florida Supreme Court reversed the trial court's denial of Defendant's postconviction claim pursuant to Rule 3.851 of the Florida Rules of Criminal Procedure, relating to the constitutionality of the penalty phase proceedings in this case, and remanded the matter for a new penalty phase pursuant to Hurst v. State, 202 So.3d 40 (Fla. 2016) and it's unanimity requirements.
2. Defendant's new penalty phase proceedings are schedule to commence with Jury Selection on Monday, February 24, 2020.
3. On Thursday, January 23, 2020, the Florida Supreme Court receded from the unanimity requirements of Hurst in its opinion in State v. Poole, SC18-245, calling into question the necessity of a new penalty phase for cases such as Defendant's.
4. In the instant case, Defendant was found guilty by a unanimous jury of both First Degree Premeditated Murder and First Degree Felony Murder, as well as Home Invasion Robbery with a Firearm, Kidnapping, and Aggravated Fleeing to Elude. The State did not concede to a new penalty phase in this cause.
5. Given the ruling in Poole, the State may be entitled to seek reinstatement of the death penalty previously imposed by the trial court in this cause.
6. Attorneys for both the State and Defense need additional time to determine the ramifications of Poole and to determine how to proceed in light of the Florida Supreme Court's newly released opinion.
7. Pursuant to Rule 3.330 of the Florida Rules of Appellate Procedure, attorneys for Poole may file for rehearing of Poole within 15 days of issuance of the written opinion.

8. Counsel for Defendant has indicated in writing that he has no objection to continuance or abeyance of this matter.

The undersigned Assistant State Attorney hereby certifies this Motion is made in good faith and not for purposes of delay.

WHEREFORE, the State respectfully requests the Court grant this continuance of the penalty phase proceedings to a later date, or in the alternative, to grant an abeyance of this matter until litigation is settled pursuant to Poole.

R.J. LARIZZA  
STATE ATTORNEY

By: s/TAMMY L JAQUES  
ASSISTANT STATE ATTORNEY  
Florida Bar No.: 0377960  
ESERVICEFLAGLER@SAO7.ORG

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by mail/delivery to JUNIOR BARRETT, OFFICE OF CRIMINAL CONFLICT, 101 SUNNYTOWN ROAD, SUITE 310, CASSELBERRY, FL 32707, on January 27, 2020.

s/TAMMY L JAQUES  
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