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IN THE FLORIDA SUPREME COURT

CARL PUIATTI, :

Appellant, :

vs. : Case No. 65,321

STATE OF FLORIDA, :

Appellee. :

______________________________ :

APPEAL FROM THE CIRCUIT COURT
IN AND FOR PASCO COUNTY
STATE OF FLORIDA

SUPPLEMENTAL BRIEF OF APPELLANT

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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ARGUMENT

BECAUSE A SIGNIFICANT PORTION OF THE PENALTY PHASE PROCEEDINGS IN THIS CASE WERE CONDUCTED ON A SUNDAY, THE RESULTANT DEATH SENTENCE IS VOID AS A MATTER OF FLORIDA LAW. 1

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ARGUMENT

BECAUSE A SIGNIFICANT PORTION OF THE PENALTY PHASE PROCEEDINGS IN THIS CASE WAS CONDUCTED ON A SUNDAY, THE RESULTANT DEATH SENTENCE IS VOID AS A MATTER OF FLORIDA LAW.

It is a general rule of American law that a judge or magistrate has no authority, absent a permissive statute, to hold court or conduct a trial on Sunday. 83 CJS Sunday §51; 85 ALR 2d 596; 50 Am Jur Sundays and Holidays §73. This rule has long been recognized as the law of Florida. Bacon v. State, 22 Fla. 46 (Fla.1886). As this Court has observed,

> "The rule is well settled that a judgment and sentence entered on Sunday is void. As the judgment is reversed on other grounds, we need say no more on this point, as it is not probable that a circuit judge will hereafter hold court on Sunday."
> Higginbotham v. State, 101 So. 233 (Fla.1924).

That Sunday is not a juridical day was acknowledged at Common Law by the maxim Dies Dominicus non est juridicus, stated by Black's Law Dictionary (4th ed.) as having been noted in Lord Coke's commentary on Littleton. The maxim was cited with favor by this Court in Hodge v. State, 10 So. 556 (Fla.1892), Barnes v. State, 67 So. 131 (Fla.1914), and Brooks v. Miami Bank and Trust, 155 So. 157 (Fla.1934).

Sir William Blackstone indicates that the principle that courts have no power to convene or perform judicial functions on Sunday may have originated with the terms of court established by King Alfred and was "certainly settled" in the time of Henry III.

> But though many of the return-days are fixed upon Sundays, yet the court never sits to receive these returns til the Monday after and therefore no proceedings can be held or judgment can be given, or supposed to be given, on the Sunday.

III Blackstone's Commentaries, 277.

The substance of Blackstone's statement has been acknowledged as the law in Florida.

> In the absence of statutory provisions to the contrary, the law does not contemplate that judicial process, writs, or notices shall be made returnable on Sundays, since Sundays are dies non juridicis, nonjudicial days, and the offices of the courts are not open on Sundays, therefore returns or appearances cannot in law be made in response to judicial process, writs or notices. What cannot legally be done is not required by law to be done.

Brooks, supra, at 160. The principle has even been extended to Saturdays in Dade County where, by Special Act, Saturday is a legal holiday. North Beach Investments v. Sheikewitz, 1 Fla.Supp. 3.

It is clear that the prohibition against judicial activities on Sunday applies only to judicial acts and not to those purely ministerial functions which merely happen to be associated with judicial proceedings. 85 ALR 2d 596; Hodge v. State, supra; Op. Atty.Gen. 48-21 (1948). Hence the receipt of a verdict on Sunday and even a court's answering of questions propounded by juries during deliberation on Sunday have been regarded as purely ministerial acts, at least in situations where the case was submitted to the jury before midnight on Saturday. 85 ALR 2d 596; 30 Fla.Jur. Sundays and Holidays §8; Stone v. United States, 64 F. 667 (1894), affirmed 167 U.S. 177, 42 L.Ed. 127 (1897). Ball v. United States, 140 U.S. 118, 35 L.Ed. 377 (1891).

In considering the lack of capacity of Florida Courts to function on Sunday, this Court has noted that the rule stands separate and apart from the body of law dealing with "Blue laws" or Sunday closing statutes and ordinances. Where the latter is concerned, Sunday is a "Natural day" of twenty-four hours, but

> ...dealing with the question of the authority of judicial tribunals to function on Sunday, ...as there was no statute controlling the matter in this state, it was needful to revert to the rule under the common law, both as to what judicial function might be performed on Sunday and what period of time was included in Sunday considered as _dies non juridicus_, and it was there held that Sunday _dies non juridicus_ extended from sunrise to sunset on the day Sunday. An entirely different rule obtains, however, in defining Sunday as referred to in statutes prohibiting the performance of labor and certain acts on Sunday which are entirely lawful at any other time; and we find that, in applying these statutes, the great weight of authority in this country is, and we think logically and rightly is, that the period covered by the designation "Sunday" is the natural day existing between 12 o'clock midnight at the end of Saturday and 12 o'clock midnight beginning of Monday.

Gillooley v. Vaughn, 110 So. 653,656 (Fla.1926); see also, _Harrison v. Bay Shore Development_, 111 So. 128 (Fla.1926).

In _Barnes_, _supra_, this Court upheld a verdict received and sentence passed at about 2:30 a.m. on a Sunday, where the jury had begun its deliberations before midnight, Saturday. Justice Cockrell explained why this and other cases where a verdict was received on Sunday did not contravene the rule that judicial activity on Sunday is void.

> In the olden days it was difficult to fix the exact time when midnight arrived, while sunrise was of easy observation. Again, in holding courts during the daylight those in attendance

> were kept from public worship and the exhibition of secular activity was offensive to those engaged in religious duties. These and perhaps other considerations prevented the application of the prohibition to the courts who were unable to finish their serious labors by the midnight hour.

Barnes v. State, 67 So. 131 (Fla.1914).

Justice Buford stated the rule succinctly in Harrison v. Bay Shore Development Co., supra, at 128.

> Under the Common Law the period of time included within the prohibition of judicial proceedings on Sunday is from sunrise to sunset, and this rule has been adopted as the law in this state.

The principle that Florida courts cannot function on Sunday, though a matter separate and apart from Sunday closing laws and governed by separate rules, bears some similarity to prohibitions against Sunday commercial activity in that both are legitimate exercises of the sovereign power, founded in the need to protect the health, safety and general welfare of citizens from the "evils attendant upon uninterrupted labor." Henderson v. Antonacci, 62 So.2d 5,9 (Fla.1952); Op.Atty.Gen. 69-124. The mere fact that the day chosen as a day of rest is Sunday does not conflict with constitutional provisions respecting the separation of church and State. McGowan v. Maryland, 366 U.S. 420, 6 L.Ed.2d 393, 81 S.Ct. 1101 (1960).

At the time of the American Revolution, the setting aside of Sunday as a day of rest was recognized as a civil matter rather than an ecclesiastical rule:

> For, besides the notorious indecency and scandal of permitting any secular business to be publicly transacted on that day in a

> country professing Christianity, and the corruption of morals which usually follows its profanation, the keeping one day in the seven holy, as a time of relaxation and refreshment as well as for public worship, is of admirable service to a state, considered merely as a civil institution. It humanizes, by the help of conversation and society, the manners of the lower classes, which would otherwise degenerate into a sordid ferocity and savage selfishness of spirit; it enables the industrious workman to pursue his occupation in the ensuing week with health and cheerfulness....

IV Blackstone's Commentaries 63. This observation was quoted with favor by Chief Justice Warren, speaking for the U.S. Supreme Court in McGowan, supra as was a similar comment by Justice Field:

> Laws setting aside Sunday as a day of rest are upheld, not from any right of the government to legislate for the promotion of religious observances, but from its right to protect all persons from the physical and moral debasement which comes from uninterrupted labor. Such laws have always been deemed beneficent and merciful laws, especially to the poor and dependent, to the laborers in our factories and workshops and in the heated rooms of our cities; and their validity has been sustained by the highest courts of the States.

Soon Hing v. Crowley, 113 U.S. 703, 28 L.Ed. 1145,1147, 5 S.Ct. 730 (1885).

It should be noted that the question of judicial proceedings on Sunday goes to the inherent power of courts to function on that day, absent a statute giving specific authorization. Court proceedings on Sunday are not merely voidable, they are null and void and cannot be legitimized by specific or tacit consent of the parties. In Hodge, supra, this court specifically noted and declined to invoke a written agreement between the State and Mr. Hodges' attorney to take "no advantage or exception by reason of such verdict having been rendered on the sabbath."

In the case here considered, it is clear from the record that during the second or penalty phase of the bifurcated trial, the court recessed on the evening of Saturday, March 24, 1984 (R2460) and reconvened on Sunday, March 25, 1984. (R2462-2464) As reflected in the transcript (R2462-2539), this was not a situation wherein a court convened on Saturday continued its work past midnight without recess, but a series of judicial acts performed in the early afternoon of Sunday, March 25, 1984. The court formally reconvened, the jury was returned to the courtroom, counsel for the parties delivered their respective closing arguments, the court recessed and later reconvened, the jury again returned and was formally charged by the court and retired to deliberate. Awaiting call of the jury, the court recessed, to reconvene a third time when the jury returned verdicts calling for imposition of the death penalty. (R286) The jury was polled by the court and excused from further service. The court proceeded to hear and grant requests for pre-sentence investigation. The court then recessed.

There is no doubt that the death sentence imposed upon Appellant was founded upon and resulted from a series of judicial acts performed during daylight hours on a nonjuridical day. Those judicial acts (and consequently the sentence founded upon them) are void as a matter of Florida law. Appellant's sentence should be reversed.

CONCLUSION

Based upon the foregoing supplemental brief, Appellant, Carl Puiatti, prays this Honorable Court to reverse his death sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Attorney General's Office, Park Trammell Building, 1313 Tampa Street, 8th Floor, Tampa, Florida 33602 by mail on this 10th day of April, 1985.

for: GARY R. PETERSON

GRP:js