

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 032
CAUSE: 49D32-2004-MR-013622

STATE OF INDIANA)
)
 V.)
)

FILED
May 12, 2023
CLERK OF THE COURT
MARION COUNTY
JO

ELLIAHS LAMAR DORSEY

**ORDER DENYING DEFENDANT’S MOTION
TO DISMISS (#69)**

The Court, having reviewed the Defendant’s Motion to Dismiss, [Pleading #69] with its accompanying Memorandum of Law [Pleading #70] and attached exhibits, filed on January 23, 2023, the State’s Response and Memorandum of Law, filed on March 8, 2023, the Defendant’s Verified Memorandum of Law [Pleading #76], filed on March 30, 2023, and having conducted an evidentiary hearing with the receipt of exhibits and hearing further argument on March 17, 2023, now DENIES the Defendant’s Motion to Dismiss. In support of its ruling, the Court notes:

1. Because of the serious legal and ethical issues raised in the Defendant’s pleadings, the fact that the Defendant is facing a death penalty request where *super due process* is required by the United States Supreme Court, and the strict requirement under *Castor v. Indiana*, 587 N.E. 2d 1281 (Indiana 1992), that the Defendant charged with the death penalty aggravator of killing a law enforcement acting in the course of duty must have actual knowledge that he was killing a law enforcement officer, it was absolutely essential for the Court to conduct this pretrial hearing.

2. While the State contested the Court's authority to conduct such a hearing, the Court asserts the *super due process* issues involving a capital case where the defense is alleging there is no evidence with which to charge an aggravating circumstance require such a hearing for legal and practical concerns. Many of these are discussed in a case from New Mexico entitled *State v. Ogden* 118 N.M. 234 (1994), but also include

- a. Extra judicial resources for a separate sentencing proceeding to evaluate aggravating and mitigating circumstances
- b. The need for additional voir dire resources in obtaining a death qualified jury, including extensive juror questionnaires and individualized questioning.
- c. The additional expenses involved with more experienced litigators and investigations. In Indiana, this requires the substantial expense of having two (2) death qualified attorneys at public expense with an almost unlimited budget to develop and evaluate mitigating circumstances.
- d. The extra judicial time and resources devoted to hearings challenging the procedures and constitutionality of the death penalty.
- e. The extra expense of employing expert witnesses to assist in assessing mitigation evidence, testifying at pretrial hearings to challenge the death penalty, and ultimately testifying at trial. This includes additional travel and lodging expenses.
- f. The extreme costs incurred with a sequestered jury. This includes lodging, travel expenses, meals, entertainment options, additional security

and court staff expenses in monitoring eighteen jurors 24/7 for a multiple week trial, plus lost opportunity costs for the jurors themselves.

3. In reviewing the exhibits, the Court does find there is some evidence, particularly within the unsworn statement of Aisha Brown given to IMPD investigators, that the State could argue to a jury that the Defendant had actual knowledge. The evidence must be entered as substantive evidence against the Defendant, and the jury would have to determine what value to give it.
4. For a motion to dismiss, it is not for the Court to weigh the evidence or make a credibility determination: that rests exclusively with the jury if the evidence is properly submitted to them. The Court simply must determine whether there is some evidence from which the jury could infer actual knowledge on the Defendant's behalf.

THEREFORE, the Court denies the Motion to Dismiss and permits the State to pursue its aggravating circumstance under I.C. 35-50-2-9(6)(A).

Mark D. Stoner

Hon. Mark D. Stoner
Judge, Marion County Superior Court
Criminal Division, Room 32

Date: May 11, 2023

Cc: File
Marion County Prosecutor Michelle Sharpe, Rob Beatson
Defendant's Attorney Raymond Casanova, Deanna Martin