



The Indiana death penalty statute, IND. Code 35-50-2-9, as applied and on its face violates the Sixth and Fourteenth Amendments to the United States Constitution because it permits imposition of the death sentence without requiring proof of all elements of the offense of capital murder beyond a reasonable doubt. Specifically, the statute as interpreted does not require proof that the aggregate weight of the aggravators exceeds the weight of the mitigators beyond a reasonable doubt.

The Indiana death penalty statute, IND Code 35-50-2-9, as applied and on its face violates the Indiana Constitution, Art. 1, Sec. 13 and 19. As currently interpreted by the Indiana Supreme Court, the Indiana death penalty statute denies the capital defendant his rights to a jury trial in which the jury determines the law and facts.

Indiana's death penalty statute, IND Code 35-50-2-9, is unconstitutional as applied in violation of the Eighth and Fourteenth Amendments to the United States Constitution and Art.1, Sec. 13, 16, 18 and 23 of the Indiana Constitution. The statute fails to require the sentence to consider all relevant mitigating evidence proffered.

The Indiana death penalty statute, IND Code 35-50-2-9, as applied and on its face violates the Sixth, Eighth and Fourteenth Amendments to the United States Constitution. The statute and pattern jury instructions for the penalty phase repeatedly describe the jury's decision as a "recommendation." This language systematically diminishes the jurors' sense of responsibility for their role in fixing punishment in violation of *Caldwell v. Mississippi*, 472 U.S. 320 (1985) and its progeny.

Indiana's death penalty statute, IND Code 45-50-2-9, is unconstitutional on its face and as applied in violation of the Eighth and Fourteenth Amendments to the United States Constitution and Art. 1, Sec. 16 of the Indiana Constitution. The statute fails to

guide the sentencer's discretion in choosing between sentences of death and life without parole, thereby promoting arbitrary and disproportionate sentences.

Indiana's death penalty statute, IND Code 35-50-2-9, as applied by actual capital jurors, violates the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the Indiana Constitution, Art. 1 Sec. 13, 16, 18 and 23. Empirical studies of actual capital jurors in Indiana and other states demonstrate the following:

- a. Many capital jurors decide the penalty in capital cases before the penalty phase, in violation of a capital defendant's right to an individualized sentencing determination;
- b. Capital jury selection fails to remove large numbers of death-biased jurors and creates juror bias for the death penalty, thereby violating a capital defendant's right to an unbiased jury on the appropriate sentence;
- c. Many actual capital jurors misunderstand and ignore penalty phase instructions, and thus, the capital jury's sentencing discretion is neither guided nor channeled;
- d. Many actual capital jurors erroneously believe that a death sentence is mandatory for certain murders in violation of principles of *Woodson v. North Carolina*, 428 U.S. 280 (1976);
- e. Many actual capital jurors believe the responsibility for the sentence imposed lies elsewhere in violation of principles in *Caldwell v. Mississippi*, 472 U.S. 320 (1985);
- f. Race continues to affect decisions of capital jurors in violation of principles of equal protection and due process; and

g. Significant numbers of actual capital jurors erroneously believe that a capital defendant sentenced to life without parole will not spend the rest of his life in prison, but instead will be released from parole in violation of principles of *Simmons v. North Carolina*, 512 U.S. 154 (1994)

WHEREFORE, Mr. Dansby respectfully requests the Court to declare Indiana's death penalty sentencing statute unconstitutional, to dismiss the State's request for the death penalty and for all other just and proper relief in the premises.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 30<sup>th</sup> day of October 2018, I electronically filed the foregoing document using the Indiana E-filing system (IEFS). I also certify that on the 30<sup>th</sup> October 2018, the foregoing document was served up the following person by IEFS: Tom Chaille.

/s/ Michelle F. Kraus