



IN THE CIRCUIT COURT OF THE  
EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY,  
FLORIDA

CASE NO. 2012-CF-35337-A

STATE OF FLORIDA,

Plaintiff,

vs.

BRANDON LEE BRADLEY,

Defendant.

**MOTION IN LIMINE REGARDING REFERENCE TO  
NON-ENUMERATED MITIGATING FACTORS**

The Defendant, BRANDON LEE BRADLEY, by and through his undersigned Counsel and pursuant to article I, sections 2, 9, 16, 17, 21 and 22 of the Florida Constitution and the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution, moves the Court in limine to preclude reference, by counsel, witnesses, or by the court, to mitigating factors not specifically listed in §921.141(6), §§(a) through (g), as “non-statutory” mitigating factors, and as grounds states as follows:

1. The Defendant is charged herein with first degree premeditated murder and the State has announced its intention to seek the death penalty in this case.

2. It is common for prosecutors, judges, expert witnesses and even defense attorneys to informally refer to mitigating factors that are not among those specifically listed in §921.141(6) as “non-statutory” mitigating factors and to the mitigating circumstances specifically listed in §§(a) through (g) as “statutory” mitigating factors.

3. Referring to mitigating considerations as “non-statutory” mitigating factors in the presence of the jury unfairly, inaccurately and prejudicially implies that mitigating considerations not expressly listed by statute are inferior to those that are

expressly listed. Because the process involves weighing of these factors, that inference is prejudicial.

4. Mitigating considerations not specifically enumerated in the statutes have never been held to have different weight than those listed by statute. The jury and judge must fairly consider and weigh any aspect of the offense or of the Defendant's character or record that mitigates the offense. Lockett v. Ohio, 438 U.S. 586 (1978); Eddings v. Oklahoma, 455 U.S. 104 (1982); Penry v. Lynaugh, 492 U.S. 302 (1989). Section 921.141(6)(h), Florida Statute, requires that the jury and judge consider, "the existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty." In that regard, *anything* that the jury may consider as mitigation falls under this broad statutory language is, therefore, a "statutory" mitigating consideration.

5. Whether law provided to the jury comes from statute or case law is not a proper consideration for the jury and it has no bearing on how the law is to be applied. For that reason, the standard jury instructions in criminal cases do not provide citations to their sources for the jury, although some portions derive from statute and some from case law. The term "non-statutory" is not contained in the standard jury instructions, nor is that information properly presented to the jury by any witness, attorney or judge. Because it is irrelevant and prejudicial, the term "non-statutory" should not be used in a criminal trial proceeding.

6. Referring to valid mitigating considerations which are not specifically enumerated as "non-statutory" has the effect of undermines the validity and reliability of any subsequent death sentence due to the unfounded and improper inference that statutory factors are to be given more weight than other valid mitigating factors. It is exclusively the responsibility of the penalty phase jury, in the penalty phase of a capital case, to assign to each valid mitigating factor the proper weight, as the jury sees fit.

7. Additionally, prosecutors, courts and defense attorneys refer *out of the presence of the jury*, for convenience sake, to the statutory mitigating consideration

created by Section 921.141(6)(h), Florida Statutes, as the "catch-all" mitigating factor. The phrase "catch-all" is likewise demeaning to the factors that fall under the umbrella of this statutory mitigating consideration. For the same reasons as listed above, reference to this mitigating consideration as a "catch-all" by the court, any witness or attorney must not occur in the presence of the jury.

WHEREFORE the Defendant respectfully requests the Court to enter the requested order in limine and grant whatever further relief the Court deems just.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-service to the Office of the State Attorney, Brevard County, Florida, this 8<sup>th</sup> day of November, 2013.



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