

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.

**DEFENDANT'S MOTION FOR JURY INSTRUCTION DELINEATING ALL  
MITIGATING FACTORS UNDER FLA. STAT. 921.141(6)(h)**

The Defendant, BRANDON LEE BRADLEY, moves this Court to instruct the jury as to each of the mitigating circumstances listed by the Defense pursuant to Fla. Stat. Sec. 921.141 (6)(h), and in support of this motion provides the following legal authority:

In Downs v. Moore, 801 So.2d 906 (Fla.2001), Justice Anstead (with Justice Pariente concurring) concluded as follows in support of delineating non-statutory mitigation circumstances:

The bottom line is that juries must be given explicit and adequate instructions as to the factors they must consider in deciding whether to impose a sentence of death. Consistent with the U.S. Supreme Court's repeated concerns, juries should be provided with specific guidance as to the type of non-statutory mitigating factors that they may consider. Because the overly brief "catch all" jury instruction neither mentions nor defines the various categories of non specific mitigation a jury may consider, it may well be inadequate to provide for the type of individualized assessment of mitigation that the Supreme Court has mandated. The fact that the aggravation to be considered by the jury is highly specific underscores the problem....On the other hand, the "catch all" provision by its very brevity and general nature may actually diminish the jury's consideration of particular mitigation...

...The fact that the Defendant argues for and presents evidence of non statutory mitigators for the jury's consideration does not necessarily mean that the jury will consider and give effect to such evidence if there is no meaningful instruction from the trial court which permits consideration of the mitigation.

Fortunately, a review of many trial records that come to the Florida Supreme Court reflects that many trial courts in Florida do act when requested to supplement the "catch all" instruction by identifying to the jury certain categories of mitigation that may be claimed by the Defendant in the particular case, and for which evidence has been presented. By giving these supplemental instructions, the trial courts ensure compliance with the U.S. Supreme Court's mandate that juries are properly informed as to the matters they may consider in their deliberations.

Downs v. Moore, 801 So.2d at 921-922 (Fla. 2001)(Footnotes omitted) (Emphasis added).


In Belcher v. State, 851 So.2d 678 (Fla. 2003), Justice Pariente again urged, in her concurring opinion, that the "catch all" statutory mitigating factor under Section 921.141(6) fails to provide the jury with adequate guidance on how to determine what factors are mitigating.

Justice Pariente, in Belcher, urged that trial courts follow the example in Duest v. State, 855 So.2d 33 ( Fla. 2003), wherein the trial court allowed the list of "catch all" mitigating factors to be included in the penalty phase jury instructions.

The defense is requesting an instruction which lists the mitigating factors under Section 921.141 (6)(h) in order to fully instruct the jury regarding all mitigating factors that must be considered in determining the advisory sentence.

#### **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 day of November, 2013. FEB 0 11 2014

  
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