

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

CASE NO. 05-2012-CF-035337-AXXX-XX

STATE OF FLORIDA,

Plaintiff,

vs.

BRANDON LEE BRADLEY, a.k.a.  
BRANDON LEE BRANTLEY,

Defendant.

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**DEFENDANT'S MEMORANDUM IN SUPPORT OF A  
SENTENCE OF LIFE WITHOUT PAROLE**

On March 18, 2014, the guilt phase of the jury trial in above-captioned matter commenced. On April 1, 2014, a guilty verdict was entered against the Defendant on one (1) count of First Degree Premeditated Murder. On April 8, 2014, the penalty phase of trial ended when the jury returned a 10-2 death recommendation. On June 5, 2014, this Court conducted a Spencer hearing at which time no additional mitigation evidence or testimony was presented.

A death recommendation by the jury requires the trial judge to conduct a weighing process to determine the ultimate sentence to be imposed with respect to each conviction for first degree murder. Keen v. State, 775 So.2d 263, 283 (Fla. 2000).

**AGGRAVATING CIRCUMSTANCES**

The jury was instructed as to six (6) aggravating circumstances: (1) the capital felony was committed by a person previously convicted of a felony and on felony probation; (2) the defendant was previously convicted of a felony involving the use or threat of violence to the person (robbery); (3) the capital felony was committed while the defendant was engaged in the commission of or flight

after committing a robbery; (4) the capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody; (5) the capital felony was a homicide and was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification; and (6) the victim of the capital felony was a law enforcement officer engaged in the performance of her official duties.

**The capital felony was committed by a person previously convicted of a felony and on felony probation.**

The State proved that the Defendant was on active felony probation at the time of the offenses in this case. The State proved that the Defendant was on felony probation in 2007-CF-61680-A, 2008-CF-31707-A, and 2008-CF-36782-A.

**The defendant was previously convicted of a felony involving the use or threat of violence to the person (robbery).**

The State proved that the Defendant had a prior conviction for robbery. However, with a 10-2 recommendation, this Court has no guidance whether all 10 jurors found this aggravating circumstance beyond a reasonable doubt. Moreover, this Court has no guidance whether any of the 10 jurors considered this aggravating circumstance warranting a death recommendation in this specific case.

**The capital felony was committed while the defendant was engaged in the commission of or flight after committing a robbery.**

The evidence presented at trial was that the Defendant was sitting behind the wheel of his SUV with a blank stare as he waited for the co-defendant. Once the co-defendant entered the SUV, the SUV began to leave the parking lot at approximately 3mph. The Defendant could only drive forward as the SUV had been previously backed into the packing space. There was not testimony that

the SUV left the parking lot at a high rate of speed. Although, the testimony elicited by the State was that Andrew Jordan indicated he was going to call the police, there was no evidence presented that the Defendant heard Mr. Jordan say he was going to call the police. At no time, from exiting the parking lot to moments before the traffic stop, did the Defendant drive at a high rate of speed.

The purpose of the felony murder statute “*is to protect the public from inherently dangerous situations caused by the commission of the felony.*” State v. Hacker, 510 So.2d 304, 306 (Fla. 4th DCA 1986). The Defendant driving away, not speeding away from the parking lot did not arise to an inherently dangerous situation. No pedestrians or vehicles on roadway were put at danger by the Defendant’s exiting of the parking lot and departure from the immediate scene of the Econo-Lodge.

Felony murder is the least aggravated form of first degree murder since it does not entail a premeditated design to kill another unlawfully. The Court should give this aggravator little weight.

**The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.**

This aggravating factor, along with the aggravating factor that the victim of the capital felony was a law enforcement officer engaged in the performance of her official duties are duplicative because both aggravators are based on a single aspect of the offense, that the victim was a law enforcement officer. Kearse v. State, 662 So.2d 677, 685-686 (Fla. 1995) citing Armstrong v. State, 642 So.2d 730, 738 (Fla. 1994). This Court **must not** give this aggravator any weight.

Furthermore, as a result of the non-unanimous recommendation, this Court is provided absolutely no guidance whether the 10 jurors solely found this aggravator and their recommendation reflected that this aggravator alone and not the aggravator of the victim being a law enforcement officer engaged in the performance of her official duties required in their mind a death sentence.

**The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification.**

This aggravating circumstance was not proved beyond a reasonable doubt. In order to prove this aggravator, the State has to prove beyond and to the exclusion of all reasonable doubt that: (1) *“the killing was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage”*; (2) *“that the defendant had a careful plan or prearranged design to commit murder before the fatal incident”*; (3) *“that the defendant exhibited heightened premeditation”*; and (4) *“that the defendant had no pretense of moral or legal justification.”* Hall v. State, 107 So.3d 262, 277 (Fla. 2012) quoting Franklin v. State, 965 So.2d 79, 98 (Fla. 2007) (citing Jackson v. State, 648 So.2d 85, 89 (Fla. 1994).

The state of mind of the Defendant is critical to an analysis of the evidence for this aggravating circumstance. The evidence failed to show that the Defendant planned or arranged to commit the murder before the crimes began. The possibility that another felony, in this case robbery, may have been fully planned ahead of time, does not qualify the crime for this aggravating circumstance if the plan did not also include the commission of the murder. The plan to kill cannot be inferred solely from the plan to rob. Barwick v. State, 660 So.2d 685, 696 (Fla. 1995).

There is no doubt that everything that occurred between the time the Defendant left the parking lot to the time of the shooting there was never a moment of cool and calm reflection. Every act, including the shooting was prompted by emotional frenzy and panic. From the taking of miscellaneous items from a motel room to the belligerent conduct on behalf of the co-defendant Ms. Kerchner, there was never a moment inside the SUV where the Defendant was afforded a moment for calm and cool reflection.

One of the State's witnesses to this aggravating factor was Jeffrey Dieguez. Mr. Dieguez was impeached time and time again during his cross examination. In addition, Mr. Dieguez, at the time he overheard the Defendant's alleged statements over the cell phone that he had to kill Deputy Pill, Mr. Dieguez was under the influence of, at a bare minimum, the various prescribed medications he was taking at the time of the observance. Also, Mr. Dieguez was on active felony probation at the time of the observance, and during his trial testimony. Furthermore, Mr. Dieguez is a seven (7) time convicted felon and has been convicted of five (5) crimes involving dishonesty or false statement.

The other State witness to this aggravating factor was the co-defendant Andria Kerchner. Ms. Kerchner admitted to multiple statements made by her regarding her own personal distaste for law enforcement. Ms. Kerchner also admitted that she lied to law enforcement on several issues during her interview. She at no time attributed any statements to the Defendant about having to kill Deputy Pill until her proffer on January 15, 2014. Ms. Kerchner was facing the death penalty in this matter as well as she was indicted on First Degree Felony Murder of a Law Enforcement Officer. Ms. Kerchner pled to Accessory After the Fact of a Capital Felony and was sentenced to 12 years D.O.C. followed by 1 year community control followed by 2 years probation. In addition, a charge of sale of a controlled substance and possession of a controlled substance were dismissed in exchange for her plea in this case.

It is the Court's responsibility to resolve conflicts in the evidence. Lucas v. State, 613 So.2d 408 (Fla. 1992). Mr. Dieguez and Ms. Kerchner should carry no credibility with this Court as it relates to the alleged statements made by the Defendant just prior to the shooting.

Moreover, the State retained Patricia Zapf, Ph.D. in this matter. Dr. Zapf gave a deposition prior to her anticipated testimony at the penalty phase. The deposition was taken on April 7, 2014

and during the deposition, Dr. Zaph was asked the following question: “*taking into account all the information that you have about Mr. Bradley including the drug abuse, the paranoia, the fear, the childhood abuse, the effects of drugs and Mr. Bradley at the time of the shooting which rendered him intoxicated, and in viewing the video of the shooting in which the deputy is ordering Mr. Bradley out of the car and at some point puts a hand on her firearm, do you believe at that time that Mr. Bradley was capable of engaging in clear, calm, cool, clear reflective thought?*” Dr. Zapf replied “*no, I do not.*” (Zapf Dep. 20:19-21:4.) See attachment. The State did not call Dr. Zapf to testify at the penalty phase as a result of her deposition answer.

There is no way to determine whether the State proved and the jury found these aggravating circumstances beyond a reasonable doubt. Section 921.141 of the Florida Statutes does not require a specific unanimous finding of each aggravating circumstance.

Florida’s death sentencing scheme is unique because “*of the 38 (now 32) states that retain the death penalty, 35 require, at least, a unanimous jury finding of aggravators.*” Steele v. State, 921 So.2d 538, 548 (Fla. 2005). Florida’s statutory death sentencing scheme is the equivalent of Arizona’s regarding aggravating circumstances, prompting the United States Supreme Court to hold that “Arizona’s enumerated aggravating factors operate as ‘the functional equivalent of an element of a greater offense,’ Apprendi, 530 U.S., at 494, n.19, 120 S.Ct. 2348, the Sixth Amendment requires that they be found by a jury.” Ring v. Arizona, 536 U.S. 584, 609 (2002). The jury was not provided individual interrogatories for each aggravated circumstance alleged by the State, and as a consequence, there is a lack of demonstrable unanimity in either the finding of aggravating circumstances, or the jury recommendation, and therefore, there is no assurance that the jury has

found the CCP aggravating circumstance beyond a reasonable doubt. There is no way to correctly conclude how many jurors found CCP was proved beyond a reasonable doubt.

This Court can reasonably infer that the 10-2 vote for death reflects doubt with either with respect to the assertion that the CCP aggravating circumstance was proven, or the propriety of a death sentence, or both. It is completely impossible for this Court in any respect to glean from the 10-2 recommendation what the jury found with respect to this aggravating circumstance, and certainly not that it was found beyond a reasonable doubt. The 10-2 recommendation provides no guidance to this Court with respect to the CCP aggravator. Accordingly, this Court should give this aggravator little to no weight.

**The victim of the capital felony was a law enforcement officer engaged in the performance of her official duties.**

The State proved that the victim of the capital felony was a law enforcement officer engaged in the performance of her official duties. However, because this aggravating factor is duplicative with the avoiding arrest factor discussed above, this Court is without guidance and therefore should not give this factor any weight.

**MITIGATING CIRCUMSTANCES**

Mitigating circumstances were presented to the jury through the testimony of Jacquelyn Olander, Susan M. Skolly-Danziger, Pharm.D., MS, DABAT, Ph.D., Joseph C. Wu, M.D., Carrie Ellison, Keith Nelson, and Anthony Nelson. The following mitigating circumstances were presented and proven by the greater weight of the evidence:

1. The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

2. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired. Dr. Olander opined that the Defendant's ability to conform his conduct to the requirements of law was substantially impaired based upon his paranoia (in fear of his life), belief system (was going to be shot), and brain damage. Dr. Olander also opined that because of the Defendant's psychological paranoia and psychosis, and based upon his cognitive function, the Defendant's ability for calm and cool reflection was substantially impaired.
3. The age of the defendant (22) at the time of the crime.
4. The defendant was severely physically abused as a child. The vicious abuse began when Mr. Bradley was only 5-6 years old. Mr. Bradley would get punched if he did not move quick enough at his step-father's request. Mr. Bradley was struck often with closed fists by his step-father. Mr. Bradley would also sustain beatings with belts and electrical cords. On several occasions Mr. Bradley would be ordered by his step-father to cut down palm fronds, then ordered to pick them up and hand them to his step-father. Mr. Bradley would then get beat repeatedly with the palm fronds. On several other occasions Mr. Bradley would have to take off his clothes before his step-father began the beatings.
5. The defendant was verbally and emotionally abused as a child.
6. The defendant's mother chose his stepfather over her own children and failed to protect him from their stepfather's abusive treatment.
7. The defendant witnessed the physical, verbal and emotional abuse of his siblings by his stepfather.
8. The defendant witnessed the physical, verbal and emotional abuse of his mother by his



stepfather.

9. As a child, the defendant had no loving father figure or male role model.
10. The defendant has a close, loving relationship with his brother Anthony Nelson.
11. The defendant is known by his family and friends to be generous and has contributed financially to the support of his mother and friends.
12. The defendant was addicted to and abused drugs from an early age. The Defendant first used marijuana at the age of 12. Shortly after beginning his drug use, the Defendant began to hear voices in his teenage years. Mr. Bradley was on a 2 week drug binge prior to the shooting of Deputy Pill. In the hours leading up to the shooting, Mr. Bradley smoked 10 marijuana "blunts," ingested 12 Xanax pills, ingested hallucinogenic mushrooms, ingested approximately 6 ounces of promethazine with codeine cough syrup, and snorted 2 lines of powdered cocaine. Dr. Skolly-Danziger testified to the above drug intake by the Defendant and opined that Mr. Bradley was under the influence of a significant level of intoxication from multiple substances at the time of the offense and at the time of his interrogation. Dr. Skolly-Danziger's expert opinion is corroborated by the observations of Vanessa McNerney and Andrew Jordan, both employees of the Econo-Lodge. Ms. McNerney testified that when Mr. Bradley opened the motel room door she could easily observe his glassy eyes. Ms. McNerney also testified that Mr. Bradley was acting weird and was clearly under the influence. Mr. Jordan testified that he was "*definite*" that Mr. Bradley was high. Mr. Jordan testified that Mr. Bradley looked "*like as if he was asleep, but eyes were open...like he was there, but he wasn't there.*" Mr. Jordan also testified that Mr. Bradley had a "*blank stare.*" The cocktail of narcotics the Defendant ingested prior to the shooting of Deputy Pill

mitigates any finding of CCP.

13. The defendant suffers from brain damage and brain functional deficits. Dr. Joseph Wu, a PET-trained and MRI-trained psychiatrist, associate professor of psychiatry, and head of the U.C. Irvine PET imaging facility testified that he read both PET and MRI-DTI images that were taken of the Defendant. Dr. Wu found significant abnormalities in the scans. There was a pattern of decrease in ventral aspect of orbitofrontal cortex. Dr. Wu also found there were abnormal metabolic increases in aspects of the ventral medial temporal poles, midbrain, striatum and thalamus. The Defendant's corpus callosum portion of his brain also showed significant abnormalities. Dr. Wu's findings were consistent with brain damage or brain injury. People with similar abnormalities as were found on the Defendant's scan have difficulty processing fearful emotions and an inability to process or perceive fearful emotions, and therefore, have a tendency to misperceive and have a greater fear response. Dr. Wu opined that because of the Defendant's brain abnormalities, the capacity of the Defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired. Dr. Wu also opined that an individual with a *"bad brain and grow up in a bad/abusive environment you have 2 strikes against you...much more likely to act out."*
14. The defendant suffered head injury and possible traumatic brain injury.
15. In October, 2011, Travanti Williams, Defendant's cousin, was shot to death, which had a devastating emotional and psychological impact on the Defendant.
16. The Defendant had a two year relationship with Carrie Ellison during which she became pregnant with his child. She miscarried a few days after the death of Travanti Williams.

Thereafter, the defendant began a period of significantly greater drug abuse.

17. Following the loss of his cousin and his girlfriend's miscarriage, the Defendant appeared to be distrustful of the motives of others, paranoid, and believed that a "hit" was placed on his life and obtained a gun to protect himself.
18. Several of the defendant's friends and relatives were murdered, or died, which appeared to emotionally affect the Defendant.
19. The Defendant has been diagnosed with, and is being treated for mental disorders with psychotropic medications.
20. The Defendant has also been diagnosed with Polysubstance Dependence, in remission in a controlled environment, and Passive and Dependent Personality traits.
21. The Defendant has a full-scale IQ of 70, as assessed in 2013 by the WAIS IV.
22. The Defendant was cooperative with law enforcement and confessed.
23. The existence of any other factors in the Defendant's character, background or life, or the circumstances of the offense that would mitigate against the imposition of the death penalty.

In addition to the mitigating circumstances presented to the jury, the Defendant would propose the following to also be considered by this Court:

1. The Defendant always exhibited appropriate courtroom behavior.
2. If sentenced to life without parole, life means life.
3. Society is protected by a life sentence.
4. The Defendant is certainly punished by a true life sentence.
5. The non-unanimous recommendation of death is itself a mitigating factor. The jury recommended death by a 10-2 vote. There is no way of being absolutely sure which

aggravators were believed and proved to individual jurors beyond a reasonable doubt, let alone which aggravators were unanimously believed and proved beyond a reasonable doubt. Florida remains the “outlier” state in not requiring jury unanimity in either the proof of aggravating circumstances or the ultimate vote for death. *State v. Steele*, 921 So.2d 538, 549-550 (Fla. 2005).

### **IMPOSITION OF THE DEATH PENALTY**

In an effort to establish guidelines to help determine when the ultimate punishment is warranted for conviction of first degree murder, the Florida Supreme Court has provided that the death penalty is reserved for the most aggravated and least mitigated homicides. *Williams v. State*, 967 So.2d 735, 765 (Fla. 2007). Each case has its own set of unique facts, and the weighing of aggravation and mitigation, and certainly the ultimate vote for life or death remains a subjective, emotion-filled process despite attempts by the Court and Legislature to create objectivity.

While the jury has an advisory role in Florida’s capital sentencing scheme, it is the trial judge who makes the ultimate decision. Section 921.141(3) of the Florida Statutes states: “*notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death.*” The statutory scheme was explained by the Florida Supreme Court in the first case to uphold its constitutionality:

(T)he trial judge actually determines the sentence to be imposed- guided by, but not bound by, the findings of the jury. To a layman, no capital crime might appear to be less than heinous, but a trial judge with experience in the facts of criminality possesses the required knowledge to balance the facts of the case against the standard criminal activity which can only be developed by involvement with the trials of

numerous defendants. Thus the inflamed emotions of jurors can no longer sentence a man to die; the sentence is viewed in the light of judicial experience. Dixon v. State, 283 So.2d 1 (Fla. 1973).

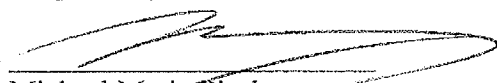
In 2013, Maryland became the 6<sup>th</sup> state in 6 years to abolish the death penalty. Recent polls according to the Death Penalty Information Center and Amnesty International show that public support for the death penalty reached its lowest level in 40 years in 2013. Statistics from both the Death Penalty Information Center and Amnesty International reveal that within the United States, the states without the death penalty have lower murder rates. Also, statistics show that the southern region of the United States succeeds in combining the most executions with the highest murder rates. Clearly the death penalty fails as a deterrent. In 2013, Robert Autobee, a former corrections officer and father of Eric Autobee, also a corrections officer who was murdered was quoted by various media outlets as well as the Death Penalty Information Center in saying *“as a victim’s father who has been trapped in the labyrinth of the death penalty, and after seeing the real misuse of resources, I am begging our elected officials to do away with our broken death penalty system. Colorado can do better by our corrections officials, and we can do much better by victims.”*

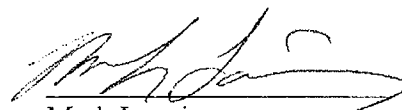
The death penalty would serve no purpose in this case other than to act as simple revenge against a brain damaged, drug addicted, physically and emotionally abused young man in his early 20’s.

It cannot be said that this is one of the most aggravated and least mitigated cases for which the death penalty is reserved. Undersigned counsel for the Defendant in this matter respectfully submits that it would be appropriate and lawful because of the significant mitigating circumstances presented, for the Court to override the death recommendation returned by the jury and impose a

sentence of life without parole.

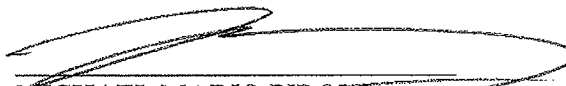
Respectfully submitted:

  
Michael Mario Pirolo  
Chief Assistant Public Defender

  
Mark Lanning  
Assistant Public Defender

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished electronically (by E-service) to the Office of the State Attorney, Viera, Brevard County, Florida, this 18th day of June, 2014.

  
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IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY, FLORIDA

CASE NO. 05-2012-CF-35337AXXX-XX

STATE OF FLORIDA

PLAINTIFF,

V.

BRADLEY, BRANDON

DEFENDANT.

\_\_\_\_\_ /

AUDIOTAPED DEPOSITION OF

DR. PATRICIA ZAPF

Taken on behalf of the Defendant

DATE: April 7, 2014

TIME:

PLACE: Viera, Florida

Transcribed by

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INDEX

	PAGE
DIRECT EXAMINATION by Mr. Moore	4
CERTIFICATE OF REPORTER	22

EXHIBITS INDEX

NONE

1  
2 (Whereupon, these proceedings were  
3 transcribed from a digital recording.)  
4

5 WHEREUPON:

6 DR. PATRICIA ANNE ZAPF,  
7 a Witness herein, having been duly sworn, testified  
8 upon her oath as follows:

9 DIRECT EXAMINATION

10 BY MR. MOORE:

11 Q Dr. Zaph, state your full name, please.

12 A Patricia Anne Zapf. Z as in zebra, A, P as  
13 in Peter, F as in Frank.

14 Q Doctor Zapf, I have your addendum dated  
15 April 4, 2014 to your earlier evaluation report of Mr,  
16 Bradley. And in the data sources that you considered,  
17 the only additional that I see, and you are going to  
18 correct me if I am missing anything, would be the  
19 interview with Mr. Bradley at the jail, which you  
20 conducted April 7. I was there for that. And the  
21 SIRS test.

22 And I don't see anything else that you  
23 considered that wasn't in the previous report; would  
24 that be right?

25 A Actually all of those data sources that I

1 listed were data sources that were in addition. So  
2 the originals were listed in the original report and  
3 then those that are in the addendum are other pieces  
4 of information that I considered.

5 Q What are the other pieces, is what I'm  
6 asking?

7 A Okay, let me pull up that report -- that  
8 addendum, pardon me.

9 Everything listed there on the bottom of  
10 page 1 and the top of page 2.

11 I had a look at the toxicology screen from  
12 Wuesthoff Hospital, the toxicology report of Dr.  
13 Goldberg (phonetic) and the radiology report of Dr.  
14 Mark Herbs (phonetic), the PET scan, MRI scan reports  
15 of Dr. Joseph Wu, toxicology report of Dr. Danziger,  
16 as well as her addendum; and then the deposition of  
17 Jeffrey Diagus (phonetic), deposition of Andria  
18 Kirchner, sworn statement of Andria Kirchner and the  
19 transcript of the police interview.

20 Q Okay, but what I'm asking is what is the  
21 difference, if anything, between this set of data --  
22 this data source list and the addendum and the data  
23 source list in your previous report?

24 A These are all additional sources of data  
25 that I looked at.

1 Q So you didn't consider --

2 A Right, that I didn't see before writing the  
3 first report.

4 Q I see. Okay. I was just confirming that.

5 Okay, and as to the SIRS test, you  
6 indicated that he scored in a range which -- well,  
7 none of his scores were suggestive of confabulation of  
8 psychiatric disturbance?

9 A That's correct. He scored within normal  
10 limits range suggesting that there is no indication of  
11 confabulation during our interview or administration  
12 of that interview.

13 Q You had a face-to-face with Mr. Bradley and  
14 you also in evaluating his behavior and his  
15 attentiveness, you did not have any concerns during  
16 your interview, that he appeared to be lying or  
17 malingering?

18 A Correct.

19 Q You indicated in your report that there  
20 were earlier red flags of exaggeration. What  
21 specifically were you referring to there?

22 A Specifically, I am referring to his reports  
23 -- his self-reports of the motor vehicle accident  
24 which occurred in February 2008, where his self-report  
25 to Dr. Olander was -- appeared to be exaggerated from

1 the police -- or sorry, from the hospital records and  
2 then his report of that incident during the  
3 post-arrest interview, his interrogation was even more  
4 exaggerated than his report of that incident to Dr.  
5 Olander.

6 So those two documented instances of  
7 exaggeration are what raised the issue for me in terms  
8 of whether he was malingering.

9 Q All right, as to those inconsistencies, can  
10 you rule out the fact that Mr. Bradley was a chronic  
11 Xanax user and the effects of Xanax on memory; can you  
12 rule that out as an explanation for the  
13 inconsistencies?

14 A I don't think so, no.

15 Q As to the report of hearing voices which  
16 Mr. Bradley reported to you during your interview with  
17 him on April 2, that would be something that you  
18 appeared not to question in your report?

19 A Yes, I didn't question it. His report of  
20 what the form and the content of the auditory  
21 hallucinations, the voice that he is hearing, it  
22 doesn't -- I mean, that is one -- even if I take that  
23 at face value that he truly does hear that voice, it's  
24 one voice, less than a minute, every few weeks.  
25 Doesn't cause distress. Doesn't cause any impairment

1 in functioning. So even if I take the symptom at face  
2 value, there is no other symptoms that kind of go  
3 along with that in terms of a symptom cluster that I  
4 could give a diagnosis of, you know, schizophrenia or  
5 psychotic disorder.

6 And that's the only real symptom that he  
7 admits to, that he claims to have. So, I'm willing to  
8 take that symptom at face value, but it doesn't appear  
9 to contribute to an overall diagnosis. He doesn't  
10 have any other symptoms.

11 Q When he interviewed Mr. Bradley, he was  
12 medicated and had been taking prescribed medication of  
13 dioxepin and risperidone, right?

14 A Yes.

15 Q And that was prescribed to him and taken by  
16 him at the Seminole County Jail?

17 A Yes.

18 Q And also was taken at the time you  
19 interviewed him, he was on that, as it was -- the  
20 prescription was continued by the Brevard County jail  
21 medical staff?

22 A Yes, correct. He was on medication at the  
23 time of our interview.

24 Q So you have never had contact with Mr.  
25 Bradley at a time when he was not on psychotropic

1 medications?

2 A Right, that's correct. I have not.

3 Q And in evaluating his history of chronic  
4 drug use, he outlined that for you, which you related  
5 in your report that he had begun at an early age 12,  
6 according to him, and his history of using marijuana,  
7 Xanax and ecstasy and cocaine and Lean (phonetic)  
8 which is the cough syrup, which contains opiates,  
9 chronically and for many years?

10 A Yes.

11 Q And you did not question his history of  
12 that? I mean, you did question, but you did not  
13 suspect that he might be exaggerating that?

14 A Correct.

15 Q And you considered the toxicology report,  
16 which was taken 29 hours after the shooting?

17 A Correct.

18 Q And that showed in the blood, well  
19 precisely, 5.4 nanograms per milliliter of THC, which  
20 would be considered a high level of THC in the blood  
21 and alprazolam, also in the blood; this is 29 hours  
22 after the shooting?

23 A Correct.

24 Q And what is the significance of the THC  
25 level that you were made aware of in Mr. Bradley's

1 blood nearly 30 hours after the shooting? What  
2 significance would you place on that?

3 A I actually don't place much significance on  
4 that given his chronic long-term use of marijuana and  
5 the fact that he would have consistently a high level  
6 of marijuana in his blood.

7 Q In determining the effects of impairment of  
8 the effects of drugs on Mr. Bradley at the time of the  
9 shooting, would you consider the observations of those  
10 who saw him around that time?

11 A Would I consider the observations?

12 Q Sure.

13 A Was that the question?

14 Q That is the question.

15 A Yes, I would consider that.

16 Q Were you may aware of observations by hotel  
17 staff who saw Mr. Bradley behind the wheel of a car  
18 within probably 15 minutes before the shooting when he  
19 appeared to have a vacant stare and it appeared that  
20 as if -- one person described him as if nobody was  
21 there; were you made aware of that?

22 A I don't believe I was made aware  
23 specifically of that information.

24 Q Were you made aware that Mr. Bradley was  
25 alleged to have been in around 11 o'clock in the



1 morning with Ms. Kirchner removing furniture from an  
2 Econo-Lodge and placing it in the back of the SUV?

3 A Yes.

4 Q Were you made aware of Mr. Bradley's  
5 driving pattern when he was pulled over?

6 A Yes.

7 Q Did you see the shooting DVD?

8 A I did.

9 Q You saw the car that when the stop was  
10 initiated that pulled into the oncoming lane somewhat  
11 nearly hitting a car head-on and then pulled into the  
12 place where it stopped over the curb and hit a trash  
13 can; you considered that?

14 A Yes.

15 Q And did you listen to the run-up of within  
16 about six seconds -- about 10 seconds, before the  
17 shooting, and could you hear Mr. Bradley's voice in  
18 the DVD?

19 A The DVD that I had, it began right as he  
20 was kind of pulling around, like kind of moving around  
21 and then hitting the garbage can.

22 And it had audio, but the audio wasn't --  
23 it was difficult to hear, but I did watch the video a  
24 couple of different times.

25 Q So were you able to hear within 10 seconds

1 of the shooting Mr. Bradley asking at least three  
2 times, why are you going to shoot me? Are you going  
3 to shoot me?

4 A I wasn't able to hear that clearly. I will  
5 listen to it with headphones as soon as I get the  
6 opportunity to do that, but I am aware that others  
7 have made statements that he made those statements; so  
8 yes, I am aware of that.

9 In terms of me hearing that clearly, I  
10 haven't at this point, but I hope to be able to listen  
11 with headphones later today.

12 Q If you do hear that and if you get a good  
13 audio, you will -- what impact would that have on your  
14 assessment of Mr. Bradley's perceptions at the time of  
15 the shooting?

16 A It is my understanding that he had said  
17 those words, so I have considered that. I haven't  
18 heard exactly how he said them, so I will listen  
19 closely to that.

20 So I have considered that information, but  
21 I haven't listened specifically. So I will do that  
22 later today.

23 Q Do you believe that in the assessment of  
24 whether Mr. Bradley was acting under extreme mental or  
25 emotional disturbance that that is -- that that

1 requires or is limited to a diagnosable mental  
2 illness?

3 A Is the question do I believe that extreme  
4 emotional and mental disturbance means that he would  
5 need to be diagnosed with a mental illness?

6 Q Yes, ma'am.

7 A That is my understanding.

8 Q Do you believe that that rules out extreme  
9 mental emotional distress caused in part or maybe in  
10 total by being under the influence of a controlled  
11 substance or drugs?

12 A I don't -- I believe that that all plays a  
13 part, that being under the influence of drugs, I  
14 absolutely believe that he, you know, was under the  
15 influence of drugs at the time specifically. So I  
16 don't take issue with emotional distress.

17 But in terms of emotional or mental  
18 disturbance, I am interpreting that as a diagnosable  
19 mental illness.

20 Q So, you are not placing your opinion or  
21 basing your opinion exclusively on -- or are you  
22 excluding -- I think you just said -- erase all of  
23 that.

24 You are considering the effects of alcohol  
25 on Mr. Bradley -- not alcohol, but drugs at the time;

1 you are considering the --

2 A Of drugs.

3 Q The effects --

4 A Yes, I believe he was in an altered state  
5 because of his drug use at that time.

6 Q Are you able to make an assessment of the  
7 degree to which he was within an altered state at the  
8 time of the shooting?

9 A I -- I am -- I am making the assumption  
10 that all of the information that has been provided  
11 before me that he was -- like she was out of it at the  
12 time in terms of, I believe she was intoxicated at the  
13 time like.

14 Q Did you also consider the deposition and  
15 trial testimony of Andria Kirshner that the two, Mr.  
16 Bradley and Ms. Kirchner had consumed large quantities  
17 of drugs, including marijuana, Xanax -- there was some  
18 cocaine and this cough syrup, Lean, in a few hours,  
19 within six hours before the shooting?

20 A Yes, I did. I think the only discrepancy  
21 was with respect to the magic mushrooms. I read that  
22 he had indicated to, I believe, Dr. Danziger, that he  
23 was on mushrooms as well.

24 He didn't say that to me and I don't think  
25 the toxicology report 28 hours -- when the samples

1 were drawn 28 hours later, they did not indicate that  
2 either.

3 But with respect to the Lean, the Xanax,  
4 the cocaine and the chronic marijuana and the ecstasy,  
5 yes.

6 Q Did you take into account Mr. Bradley's  
7 history, which included the loss of several family  
8 members and close friends to violent deaths?

9 A I did take that into consideration, yes.

10 Q Did you take into consideration the impact  
11 of that and the increased fear that Mr. Bradley had  
12 with respect to people in general and law enforcement  
13 officers in particular?

14 A I did take that into consideration as well  
15 as his -- I call it his risky criminal lifestyle,  
16 where I would expect that; yes. He -- it makes sense  
17 to me that he would have a certain level of  
18 suspiciousness and fear of the police, given his  
19 history and his family and friends history and his  
20 kind of risky lifestyle. It makes to sense to me that  
21 he would have fear and suspicion of police.

22 Q Well, as part of that fear of police, did  
23 not Mr. Bradley communicate to you that he had been  
24 treated in a way which he considered to be involving  
25 excessive use of force by the police, in which he

1 might've been hurt or roughed up in a way that he  
2 thought was excessive?

3 A Yes, he described incidents of such.

4 Q You did not question that history, right?

5 A I did not, no.

6 Q So that would be a legitimate source of his  
7 fear in your opinion?

8 A Yes, that would contribute, yes.

9 Q What, Doctor, what are the effects of early  
10 and severe and prolonged childhood abuse?

11 A You know, that is such a general broad  
12 question; they could have many different effects.

13 Q Would you agree that the earlier the onset  
14 of the abuse, the more severe it is, the younger the  
15 victim of that abuse is, the greater the impact will  
16 be on the emotional and psychological profile of that  
17 person?

18 A I think you can probably make that as a  
19 general statement, yes; I think that is accurate.

20 Q Do you believe that early and prolonged and  
21 severe abuse of a child, physical and emotional abuse,  
22 can alter the structure or the functioning of the  
23 brain?

24 A Yes, I do.

25 Q What areas do you recognize -- do you

1 recognize the amygdala as one of the areas of the  
2 brain that could be affected by what I just described?

3 A I'm sorry, the brain specifically and its  
4 structure is really beyond my area of expertise.

5 Q Are you aware, or do you know or not, that  
6 the amygdala -- the amygdala modulates the perceptions  
7 of fear?

8 A If you ask me specifically what does the  
9 amygdala do, I wouldn't be able to give you a specific  
10 function for the amygdala.

11 Q Is that something that a neuropsychologist  
12 might be able to answer?

13 A A neuropsychologist might be able to answer  
14 that.

15 Q Or a neuropsychiatrist?

16 A A neuropsychiatrist might be able to answer  
17 that.

18 Q Mr. Bradley related to you a history of  
19 abuse and you outlined that in your report and I  
20 believe you indicated that you do not question the  
21 validity or the credibility of that account?

22 A Correct.

23 Q Does the abuse, child abuse that Mr.  
24 Bradley reported, would that, in your opinion,  
25 contribute to his fear or paranoia around the time of

1 the shooting?

2 A You are breaking up. Could you repeat:  
3 would the abuse that he suffered contribute to his  
4 paranoia?

5 Q If Mr. Bradley as he claimed, as he  
6 reported, suffered prolonged chronic childhood abuse,  
7 would that -- would it or would it not, in your  
8 opinion, contribute to his fear or paranoia?

9 A I don't -- I don't really see that in this  
10 situation, that the history of abuse by his father,  
11 stepfather, contributing to the fear or paranoia in  
12 the moment, you know, during the commission of the --  
13 like during this whole incident. I don't really -- I  
14 don't see the connection. I don't make the -- it  
15 doesn't seem to be a contributing factor.

16 Q Can you rule it out as contributing to his  
17 level of fear and paranoia?

18 A Well, it doesn't -- it doesn't really make  
19 sense. Like it doesn't make logical sense to me that  
20 suffering as he did at the hands of his stepfather  
21 until 13 would, you know, come specifically into play  
22 in the moment of the commission of these crimes. It's  
23 a bit too much of a stretch for me.

24 Q Would corroboration -- would there be  
25 corroboration that would help in your assessment of



1 the impact of the abuse on Mr. Bradley?

2 A Would corroboration of that self-report?

3 Q Yes, ma'am.

4 A I'm sorry. So if I had corroboration of  
5 the self-report of abuse suffered at the hands of his  
6 stepfather, would that make an impact, would that  
7 change my opinion?

8 Q Well, would it influence your opinion?

9 A I take that at face value. I believe that  
10 he suffered at the hands of his stepfather.

11 Q Do you believe that severe prolonged  
12 emotional and physical abuse can have psychological  
13 effects which are difficult to treat successfully?

14 A Psychologically effects, definitely.  
15 Physical, to treat successfully -- yes, I would agree  
16 with that.

17 Q Would you agree that there can be  
18 sufficiently severe or prolonged physical and  
19 emotional abuse so that the effects are irreparable or  
20 cannot -- would not lend themselves to a good  
21 treatment prognosis?

22 A I think there are too many factors that  
23 would come into play to make such a general statement.

24 It would really depend on the individual  
25 and their various levels of psychological functioning

1 in terms of how treatable someone would be.

2 Q Did you review Mr. Bradley's jail records  
3 at the Polk County Jail?

4 A I reviewed those as part of the initial  
5 evaluation, the one where I didn't have the interview,  
6 the first report.

7 Q And what time period did that cover?

8 A Let me pull up my report, because I know I  
9 will find it there. You said Polk County? Polk  
10 Correctional Facility?

11 Q Right.

12 A I reviewed records dated -- I say in my  
13 report 3/8/2012 -- I think it was actually 3/7/2012,  
14 because I didn't start until 12:01 -- through  
15 10/30/2013.

16 Q Okay.

17 A And then I had bits and pieces -- looks  
18 like bits and pieces of the records from that point.

19 Q Taking into account all the information  
20 that you have about Mr. Bradley including the drug  
21 abuse, the paranoia, the fear, the childhood abuse,  
22 the effects of drugs and Mr. Bradley at the time of  
23 the shooting which rendered him intoxicated, and in  
24 viewing the video of the shooting in which the deputy  
25 is ordering Mr. Bradley out of the car and at some

1 point puts a hand on her firearm, do you believe at  
2 that time that Mr. Bradley was capable of engaging in  
3 clear, calm, cool, clear reflective thought?

4 A No, I do not.

5 MR. MCMASTER: No questions.

6 MR. MOORE: Okay, I don't have any other  
7 questions. Thank you, Doctor.

8 MR. MCMASTER: Thank you, doctor. Have  
9 a good trip.

10 THE WITNESS: Okay, thank you.

11 (Whereupon, this deposition was  
12 concluded.)

13 (Whereupon, reading and signing of the  
14 deposition was not discussed on the  
15 audiofile.)

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