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

STATE OF FLORIDA,
Plaintiff,

CASE NO. 2012CF035337A

vs.

BRANDON LEE BRADLEY,
Defendant.
_____/

MOTION TO DECLARE SECTION 921.141, FLORIDA STATUTES UNCONSTITUTIONAL FOR FAILURE TO PROVIDE JURY ADEQUATE GUIDANCE IN THE FINDING OF SENTENCING CIRCUMSTANCES, AND TO PRECLUDE DEATH SENTENCE

The Defendant, BRANDON LEE BRADLEY, moves this Court to enter its order declaring section 921.141 unconstitutional because it fails to provide adequate guidance to the jury as to the finding of aggravating and mitigating circumstances. In favor of this motion, the defendant states

1. Section 921.141, Florida Statutes governs capital sentencing proceedings. Subsection 2 provides:

> (2) ADVISORY SENTENCE BY THE JURY. -- After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:
>
> (a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);
>
> (b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
>
> (c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

2. The statute provides no guidance as to how the jury is to go about determining the existence of the sentencing factors or about how it is to go about weighing them. It does not state whether the jurors must find individual sentencing factors unanimously, by

majority, by plurality or even individually. It establishes no standard of proof regarding mitigating circumstances. Hence the statute is unconstitutional for failure to give the jury adequate guidance in finding and weighing the aggravating and mitigating circumstances. Further, it is unconstitutional as applied because it has been construed in an arbitrary fashion without compliance with due process and the constitutional prohibition of cruel and unusual punishment.

Lockett v. Ohio, 438 U.S. at 604, 98 S.Ct. at 2964 (1978) (plurality opinion) and related cases held that the eighth amendment requires individualized determinations of sentences in capital cases. Accordingly, "the sentencer may not refuse to consider or be precluded from considering 'any relevant mitigating evidence.' " Skipper v. South Carolina, 476 U.S. 1, 106 S.Ct. 1669, 1671, 90 L.Ed.2d 1 (1986), quoting Eddings v. Oklahoma, 455 U.S. 104, 114, 102 S.Ct. 869, 877, 71 L.Ed.2d 1 (1982). See also Lockett v. Ohio, 438 U.S. at 604, 98 S.Ct. at 2964 (1978) (plurality opinion).

In Riley v. Wainwright, 517 So.2d 657, 658, the Florida Supreme Court stressed that the Court has "recognized that the jury's determination of the existence of any mitigating circumstances, statutory or non-statutory, as well as the weight to be given them are essential components of the sentencing process. In Floyd v. State, 497 So.2d 1211, 1215 (Fla.1986), the Florida Supreme Court 'held that it was error for the trial judge not to give *any* instructions on what could be considered in mitigation because such failure may have precluded from the jury's consideration relevant non-statutory mitigating circumstances:

> Under our capital sentencing statute, a defendant has the right to an advisory opinion from a jury.... In determining an advisory sentence, the jury must consider and weigh all aggravating *and* mitigating circumstances.... *The jury must be instructed either by the applicable standard jury instructions or by specially formulated instructions, that their role is to make a recommendation based on the circumstances of the offense and the character and background of the defendant.'*

Riley v. Wainwright, 517 So.2d 656, 657 (Fla.1987). Although Riley involved an instruction which improperly limited the jury's consideration of mitigating circumstances, the Statute's fails to require the court to provide adequate jury instructions in finding and weighing the aggravating and mitigating circumstances, is tantamount to

giving no instructions, or to giving improperly limiting instructions, as in Riley, as to what can be considered in mitigation.

WHEREFORE, the defense respectfully requests this Honorable Court grant this motion.

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 8th day of November, 2013.

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