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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 EXCLUDE EVIDENCE OR ARGUMENT
DESIGNED TO CREATE SYMPATHY FOR THE DECEASED

The Defendant, BRANDON LEE BRADLEY, hereby moves this Court to prohibit evidence or argument designed to create sympathy for the deceased, including, but not limited to, the impact of the offense on the friends and/or family of the deceased, the impact of the offense on the community, the life history of the deceased, or any personal characteristics of the deceased. **Specifically the Defendant moves the Court to prohibit such evidence or argument in the guilt-innocence phase;** further, the Defendant moves the Court to prohibit evidence or argument designed to create sympathy for the deceased at the penalty phase or before the Judge. As grounds, he would state:

1. Florida law has consistently held that evidence designed to create sympathy for the deceased is inadmissible in the guilt/innocence phase. The Florida Supreme Court recently reaffirmed this line of cases in *Jones v. State*, 569 So.2d 1234 (Fla. 1990) (Testimony of victims' siblings identifying victims in guilt phase created risk of arbitrary capital-sentencing decision and was inadmissible; testimony was not necessary to establish identity of victims and was designed to evoke sympathy of jury). See also *Lewis v. State*, 377 So.2d 640 (Fla. 1979) (A member of a murder victim's family may not testify for purpose of identification of deceased where a nonrelated witness is available to provide such identification); *Rowe v. State*, 120 Fla. 649, 163 So.22 (1985); *Ashmore v. State*, 214 So.2d 67 (Fla.1st DCA 1968) (Where an identity witness is available other than member of deceased's family, use of testimony of family member as to deceased's identity is prejudicial error); *Hathaway v. State*, 100 So.2d 682 (Fla. 3d DCA 1958).

Florida law has consistently prohibited such evidence in the guilt-innocence phase of any trial (capital or otherwise). This type of evidence is not relevant to any issue in the guilt-innocence phase. It is virtually always highly inflammatory and prejudicial. Assuming *arguendo*, that such evidence is relevant, its prejudice outweighs any possible probative value. *Fla. Stat.* 90.403. The admission of such evidence would violate (def name) fundamental rights pursuant to Article I, Sections 2, 9, 16 and 17 of the Florida Constitution and the Fifth, Sixth, Eighth, and fourteenth Amendments to the United States Constitution.

2. Victim sympathy evidence is clearly inadmissible under Florida law. A long line of Florida cases, as detailed in *Jones, supra*, prohibit such evidence in the guilt-innocence phase. The introduction of such evidence in the penalty phase, or before the judge, would violate the clear limits on aggravating circumstances imposed by *Fla. Stat.* 921.141. *Grossman, supra*.

3. The prejudice from this evidence would virtually always outweigh its probative value, thus violating *Fla. Stat.* 90.403. This type of evidence is almost always a tearful, emotional recounting of the loss of a friend or loved one. As previously noted, this type of evidence has no relevance to any statutory aggravating factor. It will inevitably shift the judge's and jury's attention away from a reasoned weighing of aggravating and mitigating factors to desire for vengeance.

4. There has been extensive media coverage of the case and of the victim, Deputy Barbara Pill. Much of it has focused on memorials, tributes, honors, with a specific recognition of Dep. Pill by name by the President of the United States as a fallen officer. Without question, all of these tributes have been richly deserved, but they have no place being introduced as evidence for the jury to consider in the jury trial in this case.

WHEREFORE, the Defendant hereby moves this Honorable Court to issue its order to prohibit, in the guilt-innocence phase, evidence or argument designed to create sympathy for the deceased; including, but not limited to, the impact of the offense on the friends and/or family of the deceased, the loss to the community, the life history of the deceased, or any personal characteristics of the deceased; further, the Defendant moves

the Court to prohibit evidence or argument designed to create sympathy for the deceased at the penalty phase or before the Judge, and to 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 8th day of November, 2013.



J. Randall Moore
Assistant Public Defender
Florida Bar No. 0357847
2725 Judge Fran Jamieson Way
Building E, Second Floor
Viera, FL 32940
321-617-7373
brevardfelony@pd18.net