(15)

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 TO PRECLUDE IMPROPER ARGUMENT AND TACTICS

The Defendant, BRANDON BRADLEY, moves *in limine* for an order directing the State and its witnesses to refrain from engaging in improper argument, presenting improper testimony and engaging in improper tactics during the guilt and/or penalty phase of trial as follows:

1. The Defendant has been indicted in this case with one count of first degree premeditated murder. The State has file its notice pursuant to Fla.R.Crim.P 3.202 that it is seeking the death penalty. A defendant accused of first-degree murder in Florida is guaranteed a fundamentally fair trial, Due Process and a unanimous verdict by an impartial 12-person jury. Article I, §§ 2, 9, 16, 17 and 22 of the Florida Constitution; Amendments V, VI, VIII and XIV, U.S. Constitution; §§ 913.08 & 918.0157, Florida Statutes (2005).

2. Florida courts have condemned certain forms of testimony. For instance, a prosecutor may not ask a witness whether another witness was lying. See ***Knowles v. State***, 632 So.2d 62, 65-66 (Fla. 1993); ***Boatwright v. State***, 452 So.2d 666, 668 (Fla. 4th DCA 1984);

Toomer v. State, 599 So.2d 780 (Fla. 3d DCA 1992); ***McKinney v. State***, 579 So.2d 393 (Fla. 3d DCA 1991); ***Mosley v. State***, 569 So.2d 832 (Fla. 2d DCA 1990). It is highly improper for any witness to testify that they "believe" a defendant is lying or that another witness or victim is telling the "truth." See ***Hitchcock v. State***, 636 So.2d 572, 575 (Fla. 4th DCA 1994) (even though witness did not overtly vouch for the credibility of the child witness by testifying to the child's believability, the questions the State asked its witness were improper because they gave the jury the clear impression that the witness believed the victim was telling the truth); ***Miller v. State***, 782 So.2d 426, 431 (Fla. 2d DCA 2001) (improper for police officer to testify that he believed witness was not being truthful due to his training and experience). This practice is error because the determination of the credibility of a witness falls exclusively within the province of the jury. It is highly improper for the State to present any opinion testimony, including the prosecutor's own, as to whether a witness is telling the truth. ***Ruiz v. State***, 743 So.2d 1, 5-6 (Fla. 1999).

3. Florida recognizes that "a verdict is an intellectual task to be performed on the basis of the applicable law and facts." ***Jones v. State***, 569 So.2d 1234, 1239 (Fla. 1990). In that regard, attorneys are permitted to argue how the evidence and the logical inferences that can be deduced from the evidence establish guilt or innocence under the laws of our state. See ***Hill v. State***, 515 So.2d 176, 178 (Fla. 1987) ("The purpose of closing argument is to help the jury understand the issues by applying the evidence to the law applicable to the case.").

> The role of the attorney in closing argument is "to assist the jury in analyzing, evaluating and applying *the evidence*. It is not for the purpose of permitting counsel to 'testify' as an 'expert witness.' The assistance permitted includes counsel's right to state his contention as to the conclusions that the jury should draw from the evidence." *United States v. Morris*, 568 F.2d 396, 401 (5th Cir. 1978) (emphasis in original). To the extent an attorney's closing argument ranges beyond these boundaries it is improper. *Except to*

> *the extent he bases any opinion on the evidence in the case, he may not express his personal opinion on the merits of the case or the credibility of witnesses. Furthermore, he may not suggest that evidence which was not presented at trial provides additional grounds for finding defendant guilty.*

Ruiz v. State, 743 So.2d 1, 10 (Fla. 1999) (Emphasis added).

4. Currently, the role of the jury in the penalty phase of a capital trial is to advise the court as to what punishment should be imposed. "Guilt is not an issue in the penalty phase of a trial." ***Kormondy v. State***, 703 So.2d 454, 462 (Fla. 1997). Imposition of Florida's death penalty is controlled by Section 921.141, Florida Statute, and the jury's sentencing determination is based solely on the question of whether capital punishment is justified by the existence of "sufficient statutory aggravating considerations" and whether the mitigating circumstances outweigh the aggravating circumstances found to exist. Section 921.141(2)&(3), Florida Statute. In that regard, under Florida's statute and case law, only those aggravating circumstances expressly listed in Section 921.141(5), Florida Statute, can be used to determine whether "sufficient aggravating circumstances" exist to justify imposition of capital punishment. Section 921.141(5), Florida Statute (2005) ("Aggravating circumstances *shall be limited* to the following: . . .") (emphasis added). See ***Miller v. State***, 373 So.2d 882, 885 (Fla. 1979) ("The aggravating circumstances specified in the statute are exclusive, and no others may be used for that purpose."); ***Purdy v. State***, 343 So.2d 4, 6 (Fla. 1977) ("The specified statutory circumstances are exclusive; no others may be used for that purpose."); ***Elledge v. State***, 346 So.2d 998, 1003 (Fla.1977) ("We must guard against any unauthorized aggravating factor going into the equation which might tip the scales of the weighing process in favor of death.").

5. "What is often euphemistically called 'overzealous advocacy' ··· is really just unprofessional and unethical behavior." ***Izquierdo v. State***, 724 So.2d 124, 126 n.1 (Fla. 3d DCA 1998). Argument that a verdict of guilty should be returned for any reason other than what is lawfully permitted, and/or argument that a death penalty should be imposed for *any* reason not expressly listed in Section 921.141(5), Florida Statute, denies Due Process, a fair trial by an impartial jury, and a reliable sentencing determination guaranteed under art. I, §§ 2, 9, 16, 17 and 22 of the Florida Constitution and the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. So, too, is the use of improper arguments and tactics that have been clearly and repeatedly condemned by Florida appellate courts. Examples of improper arguments and tactics are expressly set forth in this motion to place the State and this Court on notice that these practices are clearly condemned and that the use of any of these tactics by the State after such express notification of their impropriety cannot reasonably be deemed "inadvertent." The prosecutor has an affirmative duty to instruct the state witnesses concerning pretrial rulings and state witnesses should therefore not volunteer improper opinions or testimony. ***Harris v. State***, 570 So.2d 397 (Fla. 3d DCA 1990).

6. Trial courts are required to safeguard the fundamental rights of the defendant and to control misconduct of the attorneys. ***United States v. Young***, 70 U.S. 1 (1985). Prosecutors are to be held to a high standard of conduct that is clear in its requirements:

> In *Brady* this Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of he good faith or bad faith of the prosecution." 373 U.S., at 87, 83 S.Ct. 1194. We have since held that the duty to disclose such evidence is applicable even though there has been no request by the accused, *United States v. Agurs*, 427 U.S. 97, 107 [, 96 S.Ct. 2392, 49 L.Ed.2d 342] (1976), and

> that the duty encompasses impeachment evidence as well as exculpatory evidence, United States v. Bagley, 473 U.S. 667, 676 [, 105 S.Ct. 3375, 87 L.Ed.2d 481] (1985). Such evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id. at 682 [, 105 S.Ct. 3375]; *see also* Kyles v. Whitley, 514 U.S. 419, 433-34 [, 115 S.Ct. 1555, 131 L.Ed.2d 490] (1995). Moreover, the rule encompasses evidence "known only to police investigators and not to the prosecutor." Id. at 438 [, 115 S.Ct. 1555]. *In order to comply with Brady, therefore, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including the police."* Kyles, 514 U.S. at 437 [, 115 S.Ct.].

Strickler v. Greene, 527 U.S. 263, 278 (1999) (Emphasis in original). A prosecutor, while an advocate, is also a public servant "whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." ***Berger v. United States***, 295 U.S. 78, 88 (1934). Justice is not done when prosecutors intentionally violate the law and ethical requirements. Yet, prosecutors in Florida repeatedly engage in clearly unethical conduct in death penalty cases, seemingly without fear of retribution or sanction, in order to obtain a conviction or death penalty in ways that comport neither with justice nor ethical standards for all attorneys.

> This is yet another example of inexcusable prosecutorial overkill, resulting in a sentencing retrial before a jury. The material and human resources of the state are thus squandered. If this were a matter of first impression in this jurisdiction, there might arguably be some justification for counsel's indulging in such elocution, but this Court has previously condemned this type of conduct. The failure to heed what the Court has said before in this area thus necessitates a sentencing retrial. The remarks of the prosecutor were patently and obviously made for the express purpose of influencing the jury to recommend the death penalty. The intended message to the jury was clear: unless the jury recommended the death penalty, the defendant, in due course, will be released from prison and will kill again, this time two of the witnesses who testified against him, and maybe others. There is no place in our system of jurisprudence for this argument. *See* Grant v. State, 194 So.2d 1967); Singer v. State, 109 So.2d 7 (Fla. 1959);

> *Stewart v. State*, 51 So.2d 494 (Fla 1951); *Sims v. State*, 371 So.2d 211 (Fla. 3d DCA 1979). We thus reverse the sentence of death for first-degree murder and remand back to the trial court to hold a new sentencing trial before a jury.

Teffeteller v. State, 439 So.2d 840, 844 (Fla. 1983). See ***Bertolotti v. State***, 476 So.2d 130, 132-133 (Fla. 1985) ("during closing arguments, the prosecutor clearly overstepped the bounds of proper argument on at least three occasions" by commenting on the defendant's right to remain silent, by using a "Golden Rule" argument, and by urging the jurors to send a message to the community at large).

The improprieties committed by prosecutors is not limited to what is said to the jury, but also in failing to abide by Constitutionally-driven rules that require the disclosure of material information that is helpful to the defense. For instance, in ***State v. Huggins***, 788 So.2d 238 (Fla. 2001) the Florida Supreme Court upheld the trial court's ruling that granted the defendant a new trial after the prosecutor failed to disclose that, during trial, a potential defense witness came forward and informed the prosecutor that he knew information potentially helpful to the defense. See also ***Rogers v. State***, 782 So.2d 373 (Fla. 2001) (same – Government's suppression of favorable evidence violates a defendant's due process rights under the Fourteenth Amendment).

In ***Young v. State***, 739 So.2d 553 (Fla. 1999), the Supreme Court of Florida clearly explained that the State's duty to disclose ***Brady*** material *included* the prosecutor's "work product" material such as witness interview notes *and* information that is otherwise not subject to disclosure under Florida's public record laws. The Court stated, "First, we again make plain that the obligation exists even if such a document is work product or exempt from the public records law. *Johnson [v. Butterworth*, 707 So.2d 334, 335 (Fla. 1999)]; *Walton v. Dugger*, 634 So.2d

1059 (Fla. 1993). Second, we find that the trial court's decision that the state attorney notes of witness interviews were not *Brady* material was error." ***Young***, 739 So.2d at 559.

Young and ***Rogers*** were recently discussed in depth after the State *again* withheld ***Brady*** information in yet *another* capital case that resulted in granting a new trial:

> In addition to *Young* and *Rogers* discussed above, we have reversed and remanded other cases for new trials in which arguably less material evidence was withheld from the defense. *See Mordenti* v. State, 894 So.2d 161 (Fla. 2004) (new trial ordered because State failed to disclose a witness's date book, which could have been used by the defense for impeachment purposes, and crucial information obtained from the State's interview with a key witness); *Cardona v. State*, 826 So.2d 968, 971 (Fla. 2002) (the withheld material warranting new trial was "three typed criminal investigation reports and a proffer letter from [the co-defendant]'s attorney to the State outlining the substance of what the [co-defendant] was prepared to testify to at Cardona's trial"); *Hoffman v. State*, 800 So.2d 174, 179-81 (Fla. 2001) (nondisclosure of hair evidence and reports concerning the investigation of other suspects (including a confession) required a new trial); *State v. Huggins*, 788 So.2d 238, 243 (Fla. 2001) (new trial required because the State suppressed witness statement that would have been favorable for the defense). All of these decisions support a conclusion that a substantial *Brady* violation was committed by the State in Floyd's case.

Floyd v. State, 902 So.2d 775, 787 fn. 11 (Fla. 2005). In ***Floyd***, the Florida Supreme Court vacated a death sentence and remanded the case for retrial due to a ***Brady*** violation because "The suppressed evidence not only identifies two other men acting 'very suspiciously' at the location of the murder within the time frame of the murder, but also raises additional concerns about whether the defendant truly confessed to the crime." ***Floyd***, 902 So.2d at 787.

7. Based on the track record of Florida prosecutors in capital cases, the State of Florida and this Court are respectfully but expressly reminded that the following tactics, remarks, arguments and comments by prosecutors and/or witnesses during opening statement,

presentation of testimony and/or closing argument have been unequivocally and consistently condemned as being highly improper by Florida and federal courts:

a. Evidence and/or argument concerning a defendant's **"lack of remorse."** See ***Jones v. State***, 569 So.2d 1234, 1240 (Fla. 1990) ("This Court has repeatedly stated that lack of remorse has no place in the consideration of aggravating circumstances."); ***Robinson v. State***, 520 So.2d 1, 6 (Fla. 1988); ***Pope v. State***, 441 So.2d at 1073, 1078; ***McCampbell v. State***, 421 So.2d 1072, 1075-78 (Fla. 1982).

b. Evidence and/or argument that the death penalty should be imposed due to the **dangerousness of the defendant**. ***Knight v. State***, 746 So.2d 423, 440 fn.10 (Fla.1998) ("Knight is certainly correct that a future dangerousness non-statutory aggravating factor does not exist in Florida."); ***Kormondy v. State***, 703 So.2d 454, 460-463 (Fla. 1997) ("It is important t note that our death penalty statute does not authorize a dangerousness aggravating factor"); ***Miller v. State***, 373 So.2d 882, 885 (Fla. 1979) (improper to impose death penalty based on "the defendant's allegedly incurable and dangerous mental illness.").

c. Evidence and/or argument that, if not sentenced to death, the **defendant will kill again**. ***Walker v. State***, 707 So.2d 300, 313-314 (Fla.1997); ***Kormondy v. State***, 703 So.2d 454, 460-463 (Fla. 1997); ***Grant v. State***, 194 So.2d 612, 613 (Fla.1967);

d. Argument that the death penalty should be imposed or a guilty verdict returned based upon any **fact not in evidence**. ***Spencer v. State***, 645 So.2d 377, 383 (Fla.1994) (comments on matters outside the evidence are clearly improper); ***Vaczek v. State***, 477 So.2d 1034 (Fla. 5th DCA 1985); ***Williamson v. State***, 459 So.2d 1125 (Fla. 3d DCA 1984); ***Lane v. State***, 459 So.2d 1145 (Fla. 3d DCA 1984); ***Salazar-Rodriguez v. State***, 436 So.2d 269 (Fla. 2d DCA 1983).

e. **"Golden Rule" argument/evidence** that jurors would have acted differently had they been in the same position as the defendant or that they should place themselves in the position of the victim and/or imagine the pain and suffering of the victim or the victim's family. ***Walker v. State***, 707 So.2d 315, 316-317 (Fla. 1997); ***Gomez v. State***, 751 So.2d 630, 632 (Fla. 3d DCA 1999);

f. The use of **vituperative descriptions and characterizations to describe the defendant**. ***Gore v. State***, 719 So.2d 1197, 1201 (Fla.1998) ("It is clearly improper for the prosecutor to engage in

vituperative or pejorative characterizations of a defendant or witness"); ***Reaves v. State***, 639 So.2d 1, 5 (Fla.1994); ***Breedlove v. State***, 413 So.2d 1 (Fla. 1982) (referring to the defendant as an "animal" improper).

g. Argument that urges a verdict of guilty or sentence of death based on **inflamed emotion, bias, passion or prejudice of jurors**. ***Jones v. State***, 569 So.2d 1234 (Fla. 1990); ***Edwards v. State***, 428 So.2d 357, 359 (Fla. 3d DCA 1983) (It is the responsibility of the prosecutor to seek a verdict based on the evidence without indulging in appeals to sympathy, bias, passion or prejudice);

h. Argument that jurors should **show the defendant the same mercy that was showed to the victim**. ***Thomas v. State***, 748 So.2d 970, 985 fn.10 (Fla.1999) ("We reiterate that asking a jury to show as much mercy to a defendant as he showed the victim is a clear example of improper prosecutorial misconduct, which constitutes error and will not be tolerated.");

i. Argument that any statutory mitigating circumstance for which evidence has been presented is not really a mitigating consideration under the law, including:

   i. the defendant's age at the time of the offense;
   ii. the defendant's emotional distress at the time of an offense;
   iii. the defendant's impaired capacity at the time of the offense.

j. Argument that any non-statutory mitigating circumstance that has been expressly recognized by the courts as valid mitigation and for which evidence has been presented is not legitimately a legal mitigating consideration, specifically including:

   i. the defendant's age;
   ii. the defendant's dysfunctional and abusive childhood;
   iii. the defendant's emotional distress at the time of an offense;
   iv. the defendant's impaired capacity at the time of the offense.
   v. Mercy

vi. A homicide that was not premeditated

vii. Premeditation that, if it existed, was of short duration.

k. Argument that a defendant's intoxication at the time of a homicide is not legally a mitigating consideration;

l. Argument that responsibility for imposing the death penalty lies with the judge. See ***Caldwell v. Mississippi***, 472 U.S. 320 (1985);

m. Argument that an appellate court will correct any errors in imposition of the death penalty and that responsibility for correctly applying the death penalty lies elsewhere. ***Caldwell v. Mississippi***, 472 U.S. 320 (1985): ***Adams v. Wainwright***, 804 F.2d 1526 (11th Cir. 1986), modified, 816 F.2d 1493 (11th Cir.1987);

n. Argument that the prosecutor personally believes that death is appropriate;

o. Argument that the prosecutor personally believes that a witness is credible or not credible. ***May v. State***, 600 So.2d 1266 (Fla. 5th DCA 1992);

p. Argument that a defendant should be convicted or sentenced to death because the State has even more evidence that was not presented. ***Ruiz v. State***, 743 So.2d 1, 4 (Fla.1999) ([a prosecutor] may not suggest that evidence which was not presented at trial provides additional grounds for finding the defendant guilty);

q. Argument that the prosecutor personally believes that the defendant is guilty. ***Pacifico v. State***, 642 So.2d 1178, 1183-84 (Fla. 1st DCA 1994) (it is improper for a prosecutor to express a personal belief in the guilt of the accused, or in the veracity of the state's witnesses);

r. Argument that the State of Florida does not prosecute innocent people or seek the death penalty for those that do not deserve it. ***Lavin v. State***, 754 So.2d 784 (Fla. 3d DCA 2000); ***Hall v. United States***, 419 F.2d 582, 583-584 (5th Cir. 1969);

s. Argument that it is the duty of the jurors to impose a verdict of guilty and/or a sentence of death. ***Alvarez v. State***, 574 So.2d 1119, 1120-1121 (Fla. 3d DCA 1991); ***Urbin v. State***, 714 So.2d 411, 420 (Fla. 1998); ***Garron v. State***, 528 So.2d 353, 359, fn.10 (Fla. 1988)

t. Argument that the jurors should imagine the victim's last few moments of pain, terror, apprehension, fear and suffering. ***Bertolotti v. State***, 476 So.2d 130, 133 (Fla. 1985)

u. Argument that the death penalty or a verdict of guilty should be imposed for religious or Biblical reasons;

v. Argument that the law requires a death sentence when the statutory aggravating circumstances outweigh the mitigating circumstances. ***Smith v. State***, 866 So.2d 51, 66 (Fla. 2004) ("This Court has held that comments indicating to the jury that they 'must' or are 'required' to recommend the death penalty when aggravating factors outweigh mitigating factors are erroneous misstatements of the law."); see also ***State v. Steele***, 921 So.2d 538, 543 (Fla. 2005); ***Cox v. State***, 819 So.2d 705, 717-18 (Fla. 2002); ***Franqui v. State***, 804 So.2d 1185, 1192-93 (Fla. 2001); ***Brooks v. State***, 762 So.2d 879, 902 (Fla. 2000); ***Henyard v. State***, 689 So.2d 239, 249 (Fla.1996);

w. Argument that imposition of a death sentence will deter others from committing murder. ***Garron v. State***, 528 So.2d 353, 361 fn.9 (Fla.1988), or other send a message to the community type arguments;

x. Argument that the defendant's demeanor and conduct in the courtroom, off the witness stand, are reasons to find the defendant guilty or impose the death penalty. ***Pope v. Wainwright***, 496 So.2d 798, 802 (Fla. 1986);

y. Argument that a sentence of life imprisonment with no possibility of parole might change and the defendant could someday be released. ***Urbin v. State***, 714 So.2d 411, 420 (Fla.1998) (This type of ignore the law argument has absolutely no place in a trial, especially when asserted by the State);

z. Argument that the testimony presented under section 921.41(7), Florida Statutes, commonly referred to as victim impact evidence, is an aggravating factor that justifies imposition of a death sentence in any way. ***Windom v. State***, 656 So.2d 600 (Fla.1992);

aa. Argument that imposition of the death penalty would save society the cost and burden of maintaining the Defendant in prison;

bb. Argument that comments on the exercise of any Constitutional right of the Defendant, such as the right to remain silent during the penalty phase or the right to a fair trial;

cc. Argument that mercy is not an appropriate mitigating consideration under the law. Mercy has its proper place in a capital sentencing proceeding. ***Gregg v. Georgia***, 428 U.S. 153, 203, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (holding that a jury can dispense mercy, even where the death penalty is deserved); ***Cox v. State***, 819 So.2d 705, 717 (Fla. 2002); ***Alvord v. State***, 322 So.2d 533, 540 (Fla. 1975) (fact that jury can show mercy does not render death penalty unconstitutional); ***Drake v. Kemp***, 762 F.2d 1449 (11th Cir.); ***Potts v. Zant***, 734 F.2d 526 (11th Cir.)

dd. Argument that in order for a mitigating circumstance to be valid there must be some nexus between the mitigating consideration and the crime for which the defendant is being sentenced. ***Tennard v. Dretke***, 542 U.S. 274, 285 (2004); ***Skipper v. South Carolina***, 476 U.S. 1, 5 (1986).

ee. Argument that attacks defense counsel or a legitimate defense presented by the Defendant. ***Ruiz v. State***, 743 So.2d 1, 5 (Fla. 1999); ***Lewis v. State***, 780 So.2d 125, 130 (Fla. 3d DCA 2001); ***Lewis v. State***, 711 So.2d 205 (Fla. 3d DCA 1998).

8. A death recommendation from a jury and/or a death sentence imposed by a judge following intentional improper argument over timely and specific objection denies Due Process and fundamental fairness guaranteed by Due Process, and results in arbitrary imposition of the death penalty contrary to article I, sections 2, 9, 16, 17 and 22 of the Florida Constitution, the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, their individual clauses and subparts, and International law under *jus cogens*, including but not limited to the International Covenant on Civil and Political Rights, Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, and the American Convention on Human

Rights. In that regard, the Supremacy Clause of the United States Constitution elevates international law in treaties to the supreme law of the land, thereby superceding state law:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, and Thing in the constitution or Laws of any State to the Contrary notwithstanding.

U.S. Constitution, art. VI, cl.2. Courts are to enforce international law. U.S. Constitution, art. I, § 8, cl.10, and art. III, § 2, cl. 1. . Multilateral human rights treaties should have greater force than bilateral treaties because they demonstrate international consensus on fundamental human rights:

> Although treaties that are mere exchanges of obligations between States allow them to reserve inter se applications of rules of general international law, it is otherwise in human rights treaties, which are for the benefit of persons within their jurisdiction. . . .

U.N. Hum. Rts. Ctte. General Comment 24, U.N. Doc. HRI/GEN/1/Rev.3 &8 (1997). See ***Aloeboetoe et. al v. Suriname***, Inter-Am. Ct. H.R., Judgment of 10 September 1993, Inter-Am. Ct. H.R. (Ser. C) No. 15 (1994) (holding Dutch-Surinamese slavery treaty violates jus cogens); ***Soering v. United Kingdom***, 161 Eur. Ct. H.R. (ser. A) (1989) (European Convention on Human Rights supersedes U.K.-U.S. Extradition Agreement of 1972). See Appendix, Amnesty International, International Standards on the Death Penalty (August, 1997). [I]nternational law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction. ***The Paquete Habana***, 157 U.S. 677 (1900).

9. The existing body of international law requires that any procedure for determining whether a sentence of life or death is to be imposed must provide at the very least the same rights

and protections accorded to the initial determination of guilt. See also ***Ring v. Arizona***, 536 U.S. 584 (2002) (Sixth Amendment protections apply at penalty phase).

a. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

b. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

International Covenant on Civil and Political Rights, Article 6.

c. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
   i. To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

   ii. To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

   iii. To be tried without undue delay;

   iv. To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

   v. To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

vi. To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

vii. Not to be compelled to testify against himself or to confess his guilt.

International Covenant on Civil and Political Rights, Article 14.

10. Moreover, this objection and motion is made under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, their individual clauses and subparts, and the corresponding provisions of the Florida Constitution as well as the International law cited herein. ***Caldwell v. Mississippi***, 472 U.S. 320 (1985); ***Ring v. Arizona***, 536 U.S. 584 (2002). The intentional use of improper argument and tactics by the State of Florida to secure a death recommendation from the jury and/or imposition of a death sentence by the court fails to meet the required minimum level of Due Process guaranteed by the state and federal constitutions and international treaties resulting in arbitrary and capricious imposition of capital punishment as set forth above and as may be further argued *ore tenus*.

WHEREFORE, this Court is asked to enter an Order directing the State to avoid the foregoing practices.

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.

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