

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

CASE NUMBER: 05-2012-CA-035337-AXXX-XX

STATE OF FLORIDA,

Plaintiff,

-vs-

BRANDON LEE BRADLEY,

Defendant.

ORIGINAL

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SCOTT ELLIS

TRANSCRIPT OF
DIGITAL AUDIO RECORDING

The transcript of the hearing taken in
the above-styled cause at Moore Justice Center, 2825
Judge Fran Jamieson Way, Viera Florida, on the 20th
of February, 2014, before the Honorable Morgan Laur
Reinman.

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A P P E A R A N C E S

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2725 JUDGE FRAN JAMIESON WAY
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* * * * *

P R O C E E D I N G S

1
2 THE COURT: Please be seated. Okay.
3 We can bring Mr. Brandon into the courtroom --
4 Mr. Bradley.

5 MR. MOORE: Judge Reinman, I have a
6 hard copy of my motion, motion in limine.

7 THE COURT: I was going to say, if it's
8 the motion I think it is, I have a hard copy of
9 it. I mean, I have a copy of it, and I'm fine.
10 Okay, what I'm going to do is a pretrial. And
11 as part of my pretrial, I'll hear any motions
12 that are outstanding. So, for the record, this
13 is the case of the State of Florida versus
14 Brandon Lee Bradley. This is case number
15 05-2012-CF-05 -- I'm sorry, I mean 035337-A. I
16 assume the counsels, the attorneys, are here
17 who are going to try this case next week, so
18 would the State please identify themselves, for
19 the record.

20 MR. McMASTER: Jim McMaster.

21 MR. BROWN: Tom Brown for the State,
22 Judge.

23 THE COURT: Okay, and would the defense
24 identify themselves, for the record.

25 MR. MOORE: Randy Moore, Mike Pirolo,

1 Mark Lanning.

2 THE COURT: Okay. And let the record
3 reflect that Mr. Bradley is seated with his
4 attorneys at counsel table.

5 Mr. McMaster, is there a plea offer
6 outstanding, or does the State have an offer to
7 make?

8 MR. McMASTER: No, Your Honor. He can
9 plea to the Court.

10 THE COURT: Okay. Mr. Moore, based on
11 what the State has announced, there is no plea
12 offer in this case. I want to make sure that
13 there -- I want to address that at this time.
14 Is there -- the offer would -- I mean, if the
15 defendant were to plea, it would be a plea to
16 the Court. Is the defendant inclined to plea
17 at this stage or not plea?

18 MR. MOORE: Not at all.

19 THE COURT: Okay. And have you
20 discussed -- I just want to put that on the
21 record that it has been discussed with Mr.
22 Bradley, so it is my intention to ask him
23 directly.

24 So, Mr. Bradley, your attorney, has he
25 discussed with you that -- any opportunities of

1 pleaing if you are inclined to do so?

2 THE DEFENDANT: No.

3 THE COURT: Okay. Can you state that,
4 again, please.

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Okay. I assume that
7 you're -- is that a no that there's been no
8 discussions, or is that a no that --

9 MR. MOORE: Let me take a minute to
10 make sure he understands.

11 THE COURT: Okay. I'll give you a
12 moment.

13 MR. MOORE: Okay.

14 Yes, we're okay.

15 THE COURT: Okay. Mr. Bradley, have
16 your attorneys discussed with you pleaing to
17 the Court?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Okay. And Mr. Moore has
20 told me this afternoon that you do not wish to
21 plea to this case; is that correct?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Okay. And is that
24 decision -- I want to make sure you understand.
25 Is there any questions or concerns you have

1 about that?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: And is that -- do you
4 understand the decision that you're making at
5 this time is that you would not plea to the
6 case, and we would be going forward with the
7 trial?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And is there anything you
10 want to discuss further with your attorneys?

11 THE DEFENDANT: Just about me being --
12 I left all my property.

13 THE COURT: Anything you want to
14 discuss with regard to pleaing? I'm on -- I
15 want to put on the record that you do not wish
16 to plea to these charges at this time, and I
17 want to make sure that you've had enough
18 opportunity to confer with your attorneys about
19 that issue. And, Mr. Bradley, that's the only
20 issue I'm addressing at this time.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Okay. I assume that you've
23 had enough time to discuss that with your
24 attorneys, but is there anything that you don't
25 understand about whether -- what would happen

1 if you were to plea with the Court -- to the
2 Court? Is there anything you don't understand
3 about it?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: And do you have any
6 questions about it?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: And has anyone pressured
9 you to not plea to the Court?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: And is your -- the decision
12 not to plea to the Court, is that your own
13 decision?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. I just want to make
16 sure you understand that -- that in the event
17 you were to plea to the Court, if -- it would
18 be that your sentence would be based solely on
19 the facts of the case, the guidelines of the
20 pre-sentence investigation if I ordered one,
21 and any other relevant factors that would be
22 brought before the Court.

23 Okay. Then, at this time I'll move
24 forward with the pretrial conference. Does the
25 State have a list of potential witnesses for

1 the Court?

2 MR. McMASTER: Not at this time, Judge.
3 We will have it by Monday.

4 THE COURT: With all due respect, I
5 want to review that list, make sure I can
6 pronounce all the names on it because I intend
7 to start nine a.m. Monday morning.

8 MR. McMASTER: I'll get it to you
9 tomorrow, Judge.

10 THE COURT: Okay. If you could do
11 that, so I can have the opportunity to review
12 it and go over any names that I would have
13 difficulty pronouncing.

14 MR. MOORE: We'll do the same.

15 THE COURT: Okay. And then my next
16 thing is can the State -- normally, I get the
17 list from the State, and I have the defense add
18 to it. So if you could get a list over to the
19 defense, and if they could add any witnesses,
20 probably want the witnesses in alphabetical
21 order. I mean, that is one of the things I
22 will do with the jurors early in the process,
23 so I would like that prior to Monday morning at
24 nine a.m.

25 MR. McMASTER: Yes, ma'am.

1 THE COURT: Okay. So if I could
2 get one list that's in alphabetical order with
3 the names of both witnesses on it, potential
4 witnesses.

5 MR. MOORE: I'm sure that I don't need
6 to even ask this, but I just want to make sure
7 they're not identified as state witnesses or
8 defense witnesses.

9 THE COURT: They will not be. They'll
10 be in alphabetical based on names. They won't
11 be identified as state's or defense.

12 Okay. Yes.

13 MR. McMASTER: We can make it a little
14 easier. We can get our list to you first thing
15 in the morning. The defense can do that.
16 We'll get with them to get their list and
17 combine it with ours.

18 THE COURT: I just don't want to be the
19 one to alphabetize them all and put them in one
20 list. I mean, I can if I need to. I assume
21 it's going to be somewhat voluminous.

22 MR. McMASTER: Right. We'll get that
23 to you, but if you want, we can give you our
24 list first thing Monday or tomorrow morning.

25 THE COURT: Okay.

1 MR. McMASTER: Same with defense. And
2 then we'll take their list, combine it with
3 ours, we'll get that to you Friday.

4 THE COURT: Okay.

5 MR. McMASTER: We'll get you a list
6 first thing Friday morning.

7 THE COURT: Okay. I just want to make
8 sure. I just want to look at it and have an
9 opportunity to read over it. I don't want to
10 read it for the first time in front of the
11 jurors. Every once in a while some of the
12 names are not that easy to pronounce.

13 Okay. I do want to discuss courtroom
14 decorum with the attorneys. I don't expect
15 that we'll have any issues, but this Court does
16 expect all the attorneys to follow the
17 circuit's administrative order number 09-06,
18 entitled Courtroom Decorum and Procedure. I
19 believe all the attorneys are familiar with
20 that order. At this time I will remind you to
21 stand for the jury when they enter and exit the
22 room, and that does include the defendant. No
23 speaking objections. No further than arm's
24 length from the podium unless leave of the
25 Court, and address all the attorneys, parties,

1 and witnesses by their last name unless
2 addressing a minor.

3 Now, I want to just tell you that we
4 have made some changes to this courtroom. One
5 of the things that was changed is the speakers.
6 So your speakers are very, very sensitive. So
7 make sure that you do push the button. I will
8 tell you, we're on the record now. Normally,
9 when we go into start testimony, we go into
10 what's called jury-trial mode, which means that
11 the microphones at the table are turned off.
12 But I can tell you that they -- as a result of
13 them changing out the microphones, I mean, I
14 even heard the State attorney slide a file
15 across their desk yesterday. That's how
16 sensitive they are. And normally I couldn't
17 hear that before. So I think it will pick up
18 anything that is said at the defense table or
19 at the State's table. And I just want you to
20 be aware of that. But once we start testimony,
21 it will go into jury-trial mode, which means
22 that the microphones will be turned off. If in
23 doubt, I would push the button.

24 Okay. I know that there -- I have not
25 heard any requests by, either, the State or the

1 defense, about moving to a bigger courtroom.

2 Is that an issue that the State wishes to
3 address?

4 MR. McMASTER: Court's discretion,
5 Judge.

6 THE COURT: Okay. Is that an issue
7 that the defense wishes to address?

8 MR. MOORE: Could the Court tell us how
9 jury selection is going to proceed. In other
10 words, how are the logistics --

11 THE COURT: I'm going to get to that.
12 That's my next issue.

13 MR. MOORE: If I could hear that, then
14 I would have a better idea of how to respond to
15 your question.

16 THE COURT: Okay. I know that there
17 was a chart provided in the event there's not
18 enough seats. And I know that we, I think,
19 each of you have been provided with that, that
20 chart. And I know that we have been --
21 whatever requests were made by the State, the
22 defense is having the same number of seats.
23 So, I think, that we have been more than fair
24 and impartial with regard to the assigned
25 seats. With all due respect, we haven't had an

1 issue in the courtroom with not having enough
2 seats in these proceedings so far. I realize
3 that that may change. But, and if it does, I
4 mean, this may be an issue that needs to be
5 readdressed, but I haven't seen that it's been
6 an issue so far. Okay. I will readdress it if
7 you request that I do.

8 I'll discuss the procedure for jury
9 selections. Number of jurors to be selected
10 are 12. I was considering three alternates.
11 Does the State wish to be heard with regard to
12 three alternates?

13 MR. McMASTER: No, Your Honor.

14 THE COURT: Does the State concur with
15 three alternates?

16 MR. McMASTER: Three is fine.

17 THE COURT: Does the defense wish to be
18 heard with regard to three alternates?

19 MR. MOORE: Three is fine.

20 THE COURT: Okay. So we'll have 12
21 jurors with three alternates. And I know some
22 of this is elementary, but I'm just putting it
23 on the record. Parties are allowed ten
24 peremptory challenges. Back striking is
25 allowed. Now, you should have received a

1 venire list. I know I received them. I assume
2 both parties have received them; is that
3 correct?

4 MR. MOORE: Yes.

5 MR. McMASTER: Yes.

6 THE COURT: Okay. I would like to have
7 a brief bench conference with regard to the
8 venire list.

9 (Bench conference)

10 THE COURT: The venire list that each
11 party was provided includes, what I understand
12 to be an encountbent, but it's 150 names for
13 each day. I realize that that makes it
14 difficult for you to do much investigation with
15 regard to that. And I don't -- there wasn't
16 any other way to do it. It's my understanding
17 that, and I'm doing this at bench conference
18 because there's been inquiry by the media with
19 regard to how many names. I'm not sure if
20 they're entitled to that information. I don't
21 want -- I just assumed there not be an article
22 published that we've subpoenaed 450 jurors, and
23 then that way people might know that they have
24 a subpoena.

25 MR. McMASTER: 750.

1 THE COURT: Is it 750?

2 MR. McMASTER: Yes.

3 THE COURT: That it's set for this --
4 sorry about that, maybe I can't add. That it's
5 set for, you know, jury selection on Monday,
6 and how many names have been summoned. Because
7 I think that might have an effect on whether
8 people appear for court on Monday, Tuesday,
9 Wednesday, Thursday, and Friday of next week.
10 So that information, I'm sure they can get from
11 some other source, but I wasn't inclined to
12 give that myself.

13 Having said that, it's my understanding
14 from speaking with the jury clerks that,
15 approximately, one third show up, which is why
16 you have the 150 for each day. So I do
17 apologize for that. There wasn't any other way
18 I could figure out to do that. I got you the
19 list. I think the information that I said
20 would be provided on it has been provided. But
21 I just didn't know what to do. I mean, when
22 they show up, we should be able to have our 53
23 without an issue is my understanding. But I
24 didn't know how to do it without the 150,
25 getting all the -- that's the potential jury

1 pool, and then about a third shows up, which
2 it's pretty dismaying when you think about it.

3 MR. LANNING: Well, there were 36 that
4 had been excused for whatever reason the first
5 day.

6 THE COURT: Yeah, that may have
7 happened.

8 MR. MOORE: Was that before they got to
9 the 150?

10 MR. LANNING: That was out of 150, 36
11 had been excused.

12 THE COURT: Had been excused.

13 MR. LANNING: Or rescheduled for a
14 different case.

15 THE COURT: You know, like I said, I
16 didn't know how else to do that. I had lots of
17 discussions with the jury clerks regarding
18 that. Okay. I just wanted to put the numbers
19 on, and I wanted to do that by bench
20 conference. Okay. Thank you.

21 (In open court)

22 THE COURT: Okay. Just for the record,
23 the venire in this case consists of a pool of
24 people from the entire Brevard County. I
25 wanted to make sure that you were aware of it.

1 The jurors ordered are as follows: First day
2 of trial, or first day of what we would call
3 jury selection, would be February the 24th,
4 requested 53 jurors. The second day, February
5 the 25th, 53 jurors. The third day, February
6 the 26th, 53 jurors. The fourth day, February
7 the 27th, 53 jurors. The fifth day, February
8 the 28th, 53 jurors.

9 Now I do have a chart about how they
10 will be in the -- they will -- a seating chart.
11 I have a copy for the clerk. I have two copies
12 for the court deputies. Four copies for the
13 defense, so everyone at the table would have a
14 copy. And two copies for the State. You can
15 see they'll be 21 in the box. They will be
16 numbered one through 21. And if you look at
17 the second chart, that's 26 through 37 is on
18 the left-hand side behind the State. The third
19 chart would be 42 through 53, and that's on the
20 right-hand side behind the defense. And then
21 you can see day two, the numbers just continue
22 in that pattern. And then day three, day four,
23 day five.

24 Now, the jurors will have their numbers
25 on them when they come into the courtroom. You

1 will be provided an updated list each morning
2 of the 53, and they will be numbered. The list
3 will be numbered so you can correspond the
4 numbers on your list with the numbers on the
5 chart.

6 To summarize, there will be -- I mean,
7 you will need to match up the numbers with --
8 match up the names from your venire list with
9 the numbers on the chart. There will be 21
10 jurors in the box. The rows of five and five
11 and six on each side. The last row of the
12 left-hand side of the bench, and that's my
13 left, just so you know, is for the media. And
14 we've discussed that with them. The last row
15 on the right-hand side of the bench is for the
16 victim's family and other spectators. With all
17 due respect, jury selection, I don't anticipate
18 there will be a tremendous amount of people
19 here for that, however, we do not know. Would
20 not be the best time for everyone to come and
21 observe the trial during jury selection, just
22 because that will be the time when the
23 courtroom will be -- we have more issues with
24 regard to seating. Once we get through the
25 jury selection, I don't anticipate that the

1 issue regarding seating will be a problem.

2 Any questions or concerns so far?

3 MR. McMASTER: No, Your Honor.

4 MR. MOORE: We're referring to jurors
5 by number?

6 THE COURT: Yes, sir. And then you
7 will have your venire list, it will have a
8 number on it as well, and you will have to
9 match that number up with the name, I mean,
10 with the number on the seating chart. And when
11 you refer to the jurors, for purposes of jury
12 selection, that it will have to be number one,
13 number 52, number -- or you can call them Mr.
14 number one or Mrs. number one. I've heard that
15 done, so.

16 MR. MOORE: Will they be wearing
17 numbers?

18 THE COURT: They will have -- they will
19 have -- they're big. I don't have one with me.
20 But they're about this big. And it's a big
21 typed set number, shouldn't have any trouble
22 seeing them. They will be wearing them; that
23 will be their badge. They're about this big,
24 and the numbers are big. I can see them. And
25 if I can see them -- I can see them from back

1 there. I mean, sometimes if there's a head in
2 the way, you can't, but you can see them.

3 I previously denied the defense's
4 motion to question the jurors individually for
5 death qualifying. After reviewing the process,
6 I have reconsidered this ruling, and I will
7 grant the defense's request. Accordingly, we
8 will question the jurors individually regarding
9 the death penalty and pretrial publicity. It
10 is my intention to start the questioning of the
11 jurors for each day, I will go through, that's
12 when I will talk about the length of the trial,
13 which I'll talk to you about in a few moments.
14 Talk about the -- whether that's a hardship.
15 Talk about -- identify who the witnesses are,
16 what the charges are. I'll do about -- that
17 won't be all of the time I will address the
18 jurors, but I'm trying to get that information
19 out there. So that if we need -- if someone
20 needs to be excused, we can get those on the
21 way, especially, those for hardship due to the
22 length of the trial. And then we'll take a
23 break. And then we'll do the individual
24 questionings with regard to death penalty and
25 knowledge of the case. I anticipate that will

1 take through the morning. And then after
2 lunch, I will give them another, some other
3 instructions, and then it will be open to the
4 attorneys to question them.

5 Now, during the individual questioning,
6 I'm going to do that in just a minute. Okay.
7 I want to give you a list at this time of the
8 questions, when we do the individual questions.
9 Okay. This is four for the defense, and two
10 for -- well, I don't know if they get four.
11 Let me see one, two, three, four, five. I
12 guess, give the State two, and give the rest to
13 the defense. I think I got you three instead
14 of four. What I intend to do is when we
15 question them individually, bring them in one
16 at a time. I will start the initial questions
17 with these questions that are listed here. I'm
18 going to do them just as they are here, go from
19 the death penalty questions to the knowledge
20 about the case. And then I will give the State
21 an opportunity to inquire, and the defense an
22 opportunity to inquire. Then, depending on
23 what happens there, I'd like to excuse those
24 who we can agree on, that can be agreed upon.
25 And then, I think, that will narrow the pool

1 down significantly. We'll move the chart.
2 Make it -- I'm trying to get everyone in this
3 area, so when you question them you can turn
4 the podium and just direct your questions
5 there. So the State is not looking over the
6 defense to question, or the defense is not
7 looking over the State to question. I don't
8 know if that will work, it depends on what
9 happens, how many will be excused up to that
10 point.

11 Once we finish the individual
12 questions, a new chart will be prepared, which
13 fills in the empty spaces by moving the
14 remaining jurors forward. I will continue with
15 providing some information and questioning
16 about the jury. That will be general
17 information about reasonable doubt, law
18 enforcement witnesses, and things of that
19 nature. And then each of you will have the
20 opportunity to question the entire venire. I'm
21 hoping that we get through that process of 53
22 each day, and then we'll have a pool that's
23 left and we'll address those.

24 Now, one of my questions is, let's say,
25 for example, Monday we have a pool that's left,

1 do we have them come back, or do we have them
2 remain? And if we do have them stay, with all
3 due respect, they can't stay in the courtroom
4 because there's not room for them. We do
5 have -- I have reserved the grand jury room
6 downstairs. They would be in the grand jury
7 room. They would not be with the other
8 potential jurors, however, they would be with
9 each other, but they would not be the other
10 potential jurors. Any questions or concerns
11 about that? I want to know how you feel about
12 the remaining jurors staying after each day.

13 MR. MOORE: Well, we might have a
14 better handle on that after the first day. I
15 would be surprised if, with all the publicity,
16 for cause challenges just for the life
17 situations, and death penalty issues, that we
18 would have enough to get to the general jury
19 selection even by the middle of the week. I
20 don't know if we'll have enough of a panel to
21 do that stuff.

22 THE COURT: When you say general jury
23 selection, I'm going to do some general stuff
24 with them.

25 MR. MOORE: Well, I mean, for purposes

1 of including, holding people over to have them
2 come back the next day is what I'm saying. In
3 other words, I think if we have a pool on the
4 first day, I don't think we need to bring them
5 back the next day, because I think we'll have
6 our hands full.

7 THE COURT: We might be. Let's just
8 say, for purposes of a number, like ten, are
9 left after the first day, what do we do with
10 those ten while we're questioning the jurors on
11 the second day. That's the question I'm, kind
12 of, asking.

13 MR. BROWN: It would be my suggestion
14 we send them home, keep them on the hook to
15 bring back later in the week. And say we get
16 ten from each day, I'm good with, once we get a
17 group of ten, multiple groups of ten, I'm still
18 good with questioning in the audience, so we
19 can do our group questions, both sides, to a
20 panel larger than 21 because, I think, if we
21 limit it to 21, we're going to have enough
22 strikes out of there, we're going to have to
23 bring in --

24 THE COURT: Oh, I'm just saying each
25 day. I'm going to give it -- I'm going to open

1 it up each day for some general questions.

2 MR. BROWN: I don't think we'll get
3 there.

4 MR. MOORE: I agree. We don't need to
5 bring them back. Like Tom was saying, I think
6 we, maybe, by the middle of the week, we'll
7 have enough to have a pool to do the general
8 questions. I don't see any need to keep them
9 here.

10 THE COURT: Okay. Well, we'll
11 re-address this issue. I do have the grand
12 jury room reserved if we need to put them
13 somewhere. So my main concern was that they
14 weren't waiting downstairs with the other
15 potential jurors for other proceedings.

16 Obviously, if this process takes longer
17 than I'm anticipating that it takes, then we'll
18 have to do something different. I was hoping
19 to get through, by lunchtime each day, the
20 individual questions, then come back after
21 lunch. I mean, that may not be possible. I'm
22 assuming, just on hardship alone we might lose
23 ten to 20, just on hardship alone. And then
24 they don't get individually questioned, so
25 we'll have ten or 20 or 30, maybe, for

1 individual questioning, get through them. But
2 if that takes longer than I expect, we can
3 definitely bring the pool back all at one time.
4 And depending on how many there are, you know,
5 depending on how we can set it up for
6 questioning. So we'll leave that there at the
7 time. Any questions about the questions I'm
8 going to ask them? And then I'll open it up to
9 you all.

10 MR. BROWN: Judge, the only matter
11 would be as far as hardship questions, are we
12 going to do that individually along with this?

13 THE COURT: Well, what I was going to
14 do is just ask them, generally, tell them the
15 length of the trial, tell them when we work,
16 ask them if that presents any hardship to them,
17 and go through those. I anticipate that's
18 going to take a while. I mean, that's one of
19 the first things I'm going to do.

20 MR. BROWN: My only recommendation is
21 we do that with them individually as well,
22 because what tends to happen is, the first few
23 people say something that gets them out, other
24 may people may adopt that answer, so.

25 THE COURT: Well, they would have

1 already been qualified downstairs. And they
2 would have already gotten, you know, some
3 information about their duty to serve. If I
4 question them individually, I have to question
5 53 of them, we're never going to get through
6 this process. So I am going to do that how I
7 normally do that in jury selection. And, I
8 mean, with all due respect, I think we'll know.
9 If I'm going to do it, we'll hear what their
10 answers are, if both parties agree that that's
11 a hardship, I excuse them. If at any time you
12 want to question them whether that's a
13 hardship, then I leave them on the panel for
14 you to have an opportunity to question them.

15 I mean, obviously, if someone says I'm
16 having surgery, bypass surgery Wednesday and I
17 won't be available, then I don't think that's
18 going to be -- I mean, we'll be able to address
19 that. But it's the ones, you know, I'll give
20 you an opportunity to question those that are
21 not as easily, you know, distinguished.

22 So I know that both Mr. McMaster and
23 Mr. Moore have been through a jury selection
24 with me. I intend to do that how I normally
25 would do that at that stage. And then I'll

1 give you -- I will excuse the people that
2 everyone agrees to. I will not excuse, -- if
3 there is any dispute as to whether I excuse
4 someone, and I'll give you the opportunity to
5 individually question them. Okay.

6 Okay. Any other questions or concerns
7 regarding jury selection?

8 Now, I did receive a motion in limine
9 today.

10 MR. MOORE: One or two?

11 THE COURT: I have one. I've reviewed
12 one.

13 MR. MOORE: What's the number of the
14 one you have?

15 THE COURT: Number four.

16 MR. MOORE: Well, then we have --

17 THE COURT: I even -- we even went
18 online, not yesterday, but the day before, to
19 check to see if anything was online, and I
20 didn't see anything.

21 MR. McMASTER: It was filed yesterday.

22 MR. MOORE: Number three was filed
23 yesterday.

24 THE COURT: Okay.

25 MR. MOORE: You should have that.

1 THE COURT: I don't have that.

2 MR. MOORE: I have a copy.

3 THE COURT: Okay. I'll need that.

4 With all due respect, you all file stuff
5 online, that doesn't concern me at all.

6 MR. MOORE: It was filed.

7 THE COURT: Unless it gets sent to me,
8 that doesn't concern me at all. Okay. Has the
9 State -- so I assume we want to address motion
10 in limine number three and motion in limine
11 number four.

12 MR. MOORE: That's our intention, yes,
13 Your Honor.

14 THE COURT: Has the State had an
15 opportunity to review both of those motions?

16 MR. McMASTER: Yes, Your Honor.

17 THE COURT: Okay. Give me an
18 opportunity to review motion in limine number
19 three. I have a lot of other issues to go
20 through, just so you know. I'm just in the
21 middle.

22 Okay. This -- number three has -- it's
23 a lot of issues. Okay. We'll start with
24 motion number -- motion in limine number three,
25 paragraph one. I mean, I think each paragraph

1 has a different issue in it.

2 MR. MOORE: That's correct.

3 THE COURT: So paragraph number one,
4 Mr. Moore.

5 MR. MOORE: Your Honor, we'll need some
6 time before Mr. Bradley gets taken back to the
7 jail to get him dressed. We've got clothing,
8 we want to make sure they fit him.

9 THE COURT: Oh, do you want time today?

10 MR. MOORE: Yes, ma'am. The clothes
11 are here as this Court knows. Before they take
12 him back to the jail, we'd like to get all that
13 wardrobe sorted out.

14 THE COURT: Okay. Then we will hold
15 the defendant here today to give you the
16 opportunity to do that. Okay. If the court
17 deputies will make sure that that happens.

18 Okay, Mr. Moore.

19 MR. MOORE: May I approach with the
20 case law I'm citing?

21 THE COURT: Yes, you may.

22 MR. MOORE: Do you have a copy of the
23 case?

24 MR. McMASTER: Which one, Lebron?

25 MR. MOORE: Your Honor, the first

1 paragraph of my motion in limine number three
2 has to do with the State's use of a prior
3 violent felony, a simple robbery, case number
4 2008-CF-036782, which in 2008 Mr. Bradley was,
5 although charged with robbery with a firearm,
6 kidnapping with a firearm, he was convicted by
7 plea when he pled to simple robbery without a
8 weapon, and the kidnaping charge was dismissed.
9 And the State's intention is to use prior
10 violent felony, that particular felony as a
11 prior violent felony.

12 The Lebron case, the Florida Supreme
13 Court Case that was in 2005, not 2009, as I
14 mistakenly put in the motion. But in Lebron,
15 the Florida Supreme Court reversed a penalty
16 phase proceeding and remanded it for a new
17 penalty phase proceeding, because in the Lebron
18 case, the defendant in that case had a previous
19 robbery conviction, which was used as a prior
20 violent felony in a subsequent penalty phase
21 proceeding, had been found by a jury guilty of
22 a simple robbery without a weapon, and a
23 kidnapping without a weapon. And the police
24 officer, the detective, in that penalty phase
25 proceeding was allowed to testify about the

1 fact that the defendant held a shotgun to the
2 head of the victim in that prior robbery case,
3 in the prior robbery felony case. The Florida
4 Supreme Court case says that there's three
5 situations where prior violent felonies, the
6 facts of the prior violent felony are
7 admissible to give context to the jury as long
8 as the relevant, as long as the defendant's
9 confrontation rights aren't violated. And
10 they -- their holding was that they had, as
11 long as the probative value is not outweighed
12 by the prejudicial. And the fact that the
13 defendant was convicted in a case, although he
14 was charged with robbery with a weapon,
15 although he, ultimately, was convicted of
16 robbery without a weapon. The Court held that
17 that was, in fact, an acquittal of the firearm
18 component of the robbery conviction. And to
19 introduce that was prejudicial. And the
20 prejudicial quality of those facts outweighed
21 the probative. And for that reason the Court
22 held that the, although, the robbery, the fact
23 that the robbery was admissible as a prior
24 violent felony, the fact that a firearm was
25 included could not be admitted because the

1 defendant had not pled to that, he was not
2 convicted of that, and he was not sentenced for
3 that. And although the Court doesn't mention
4 it, it would be like an Apprende issue. The
5 State is relying on facts to establish prior
6 violent felony, what would happen, it would
7 require admission by the defendant or a
8 conviction of the defendant for the use of a
9 firearm to be able to introduce that to a jury.
10 They don't have that in this case. They do
11 have the fact of the simple robbery, and that's
12 what they are limited to as introducing as a
13 prior violent felony in the penalty phase of
14 this case, if we get there.

15 So it's a case right on point. The
16 State may try to distinguish it by saying,
17 well, in the Lebron case, the one that I'm
18 citing, it was a situation where a detective
19 testified about what he had gotten from his
20 interview of a victim. And so it would be a
21 confrontation issue. But the Florida Supreme
22 Court didn't say that, they didn't say
23 confrontation issue. They say the probative
24 value was outweighed by the prejudicial,
25 because the defendant had not been convicted of

1 the robbery with the firearm.

2 THE COURT: Okay. Response from the
3 State.

4 MR. McMASTER: Judge, the defense has
5 presented you with one case of Lebron. And the
6 Court's, probably, not had the opportunity to
7 look at the entire case. May I approach?

8 THE COURT: Yes, you may.

9 MR. McMASTER: This is dealing with a
10 very specific factual situation, and the
11 opinion itself notes that. The format of, I
12 believe, the opinion that Mr. Moore presented
13 to the Court is a little different than the
14 format of the case that I've got. However, if
15 I can try to point the Court to the applicable
16 part in page three of seven of the copy that
17 you received from Mr. Moore, in the one, two,
18 three, apparently, fourth full paragraph down
19 on page three. The paragraph starts out, this
20 case has taken a somewhat unusual and complex
21 twist.

22 THE COURT: I'm there.

23 MR. McMASTER: In this particular case,
24 Judge, the guilt phase jury was submitted
25 specific questions with respect to whether or

1 not this defendant committed the murder, and
2 whether or not he not he had physical
3 possession of the firearm at the time of the
4 murder. They found, specifically, that this
5 defendant did not commit the murder, and that
6 he was not in possession of a firearm at the
7 time. And it's based on those specific unique
8 facts that the Lebron decision was reached by
9 them where the State would be precluded from
10 attempting to introduce evidence about the
11 offenses. The opinion goes on in the analysis
12 section, once again --

13 (Thereupon, the following audio portion is distorted
14 and not understandable)

15 -- suppressing the analysis, pause to
16 the unique posture of the force under to -- generally
17 -- once again put in the opinion that it's based on
18 those specific facts, which we do not have here. And
19 they make a similar statement -- on headnote six,
20 seven, and eight, which appears on page five of the
21 opinion that you have. And at the end of that first
22 full paragraph it says, this is particularly true
23 where the evidence advanced is directly and precisely
24 to the contrary of a specific factual finding by a
25 prior jury -- that the Supreme Court reached its

1 decision that he was entitled to a new penalty phase
2 trial without the State being allowed to introduce
3 the evidence that it normally would. Justice --
4 opinion cites a long line of cases to which I
5 presented to the Court, the Gore case and the
6 Anderson case, which generally -- general rule that
7 evidence such as this is, in fact, admissible in the
8 penalty phase proceeding. I've submitted two
9 additional Florida Supreme Court cases to the
10 Court -- both of those are 2010 cases. In the Banks
11 situation, there was involving a robbery and stabbing
12 in which the Court held that it was appropriate for
13 the State to be allowed to introduce evidence of
14 these things.

15 And in the Miller case, which is, I
16 think, one most applicable, if you look at the
17 headnote that I've written on the top of the Miller
18 opinion, headnote number 30, it's contained on page
19 19 of that particular opinion. The Florida Supreme
20 Court has noted that, even if a defendant has pled
21 guilty to a lesser offense, the Trial Court may allow
22 the State to present evidence that demonstrates a
23 greater offense. And then they cite Miller versus
24 State, approving the admission of testimony that
25 established the defendant, actually, committed a

1 greater offense than the offense to which he pled
2 guilty. And DeLant case, which holding that the
3 Trial Court properly allowed the State to present
4 evidence that demonstrated the use or threat of
5 violence to the person during the commission of an
6 offense resulting in a reduced charge.

7 And also the Morgan versus state,
8 holding that it was not error to allow the penalty
9 phase jury to hear evidence that the defendant's
10 previous conviction for 2nd Degree Murder was
11 obtained pursuant to an indictment for 1st Degree
12 Murder. As the Court goes on to say in the paragraph
13 following, not the next one, but the one following
14 that.

15 MR. MOORE: What page is that?

16 MR. McMASTER: It's on page 19. The
17 numbers are hard to see in the lower right
18 corner. It's headnote 30.

19 MR. MOORE: Headnote 30. Okay.

20 MR. McMASTER: It says, as in Delant,
21 Bell, Miller, and Anderson, Miller was
22 originally charged with a higher degree of
23 homicide, and pled guilty to the lesser
24 included offense of manslaughter. The State
25 properly introduced testimony that provided the

1 underlying details of the prior conviction to
2 assist the jury in evaluating Miller's
3 character. Although one aspect of the
4 testimony indicated that Miller threatened the
5 victim prior to the murder, this was a relevant
6 fact of Miller's character, and indicative of
7 his propensity to commit violent crimes.

8 Further, Miller provides no authority
9 for his assertion, which is the same assertion
10 that Mr. Moore is making, that the details of
11 the underlying offense should be limited to the
12 facts Miller included in his petition to enter
13 a guilty plea. Thus, the Trial Court did not
14 abuse its discretion when it allowed the State
15 to introduce evidence with regard to the nature
16 of the prior violent felon.

17 Mr. Moore is making the exact same
18 argument that was made in Miller and rejected
19 by the Florida Supreme Court. He's trying to
20 say that because Mr. Bradley pled guilty to
21 simple robbery that the State should be
22 precluded from introducing evidence that, in
23 fact, it was an armed robbery, and that he
24 pulled a gun on the victim at that particular
25 time. The Miller case squarely says it's

1 entirely proper and should be allowed.

2 MR. MOORE: Your Honor, that's not what
3 the Lebron case was --

4 (Thereupon was coughing that precluded the words from
5 being understood.)

6 -- proposing that. That's what the
7 Lebron case is holding, specifically, that
8 where the use of a firearm has not been pled
9 to, not been admitted to, he's not been
10 convicted of it. It can't be used as a part of
11 the prior violent felony. And that's what the
12 Lebron case holds. And I don't see in Miller
13 that Lebron is reversed. So it's not the
14 difference that makes a difference. My case is
15 on point, factual. It has to do with a
16 specific enhancement because of the firearm
17 being absent, and the defendant being acquitted
18 of that particular element, whether it's by a
19 plea agreement, or whether it's by a jury
20 acquittal, it doesn't matter. It's an
21 acquittal on that particular element. The
22 State didn't go forward on it. The defendant,
23 effectively, was acquitted of it when Mr.
24 Bradley pled to it.

25 So the Lebron case is factually on

1 point and it's a case that this Court should
2 follow. It's an Apprende issue.

3 THE COURT: Okay. At this time I do
4 want an opportunity to review the cases
5 presented by both parties, so I'm not prepared
6 to make a ruling at this moment. So I'm going
7 to take this under advisement. I'll give you
8 the date that I'm going to rule after I hear
9 how many -- after we go through the motion
10 further. Okay.

11 Mr. Moore.

12 MR. MOORE: Number two.

13 MR. McMASTER: Judge, I can shorten
14 some of this up.

15 THE COURT: Okay, that would be
16 helpful.

17 MR. McMASTER: With respect to the
18 first two points that they raise in paragraph
19 two, that Ms. Osborn saw the defendant point a
20 gun at her boyfriend, the State agrees that
21 that would be improper. We don't intend to use
22 it. And that the defendant shot up her house.
23 Once again, the State agrees, we don't intend
24 to use that. We do object to the final two.
25 We do believe that that testimony is relevant.

1 THE COURT: Okay. The motion in limine
2 will be granted as to those two issues. And
3 then, Mr. Moore, if you'll focus your argument
4 on, I believe there's three more.

5 MR. MOORE: Yes, ma'am.

6 THE COURT: Or there may be more.

7 MR. MOORE: Right. The remaining that
8 were not agreed to, that Ms. Osborn would
9 testify that she had seen the defendant with a
10 gun before, or felt one in his waistline. And
11 she heard the defendant say, oh, it will be my
12 life or others or statements to that effect.

13 As to the her seeing a gun before March
14 6th, it's irrelevant. It's prejudicial. It's
15 not even William's Rule Evidence. The State
16 hadn't filed a notice of William's Rule
17 Evidence with respect to that, but even if they
18 did, it would be probative of nothing, but
19 highly prejudicial. And the statement by,
20 alleged statement, by Mr. Bradley, it will
21 always be my life over another's, or words to
22 that effect is irrelevant. I mean, that, from
23 considering background from where Mr. Bradley
24 comes from, if you put it in context, it's
25 probably the attitude of a lot of people from

1 that part of the hood, that part of the
2 neighborhood. It has a potential for confusing
3 the jury, misleading the jury. And it's,
4 obviously, prejudicial, and not probative of
5 anything.

6 THE COURT: Okay. Response from the
7 State.

8 MR. McMASTER: Judge, put in context,
9 Ms. Osborn was in the company of the defendant,
10 I believe, in December of 2011, before the
11 incident of the shooting of March 6th of 2012.
12 They were together in a vehicle, saw a number
13 of police cars, and at the time that Mr.
14 Bradley saw the police cars, he made a number
15 of statements. One of which was acknowledging
16 that he knew that there were warrants out for
17 his arrest. Others to the effect that he
18 wasn't going to go back to jail or prison. And
19 that he was going to do, pretty much, whatever
20 he had to do not to go back to jail. These are
21 the types of statements that Ms. Osborn would
22 be expected to testify about. She did, in
23 fact, see him with a gun or felt the outline of
24 a gun in his waistline that she saw. That is
25 highly relevant in a situation when we have a

1 police officer who is shot by a wanted felon
2 who is carrying a gun. The State believes it's
3 relevant, and we believe it should be
4 introduced.

5 MR. MOORE: Your Honor, it's relevant
6 on the moment the gun is used as to whether he
7 had a firearm, but not a day before, not a week
8 before, not statements that, nonspecific
9 generic statements, I'll do whatever I have to
10 do not to get arrested. It's not the same as
11 saying, you know, a threat to kill. It's not
12 the same as saying I'm going to shoot a police
13 officer. Now, that would be relevant. But the
14 type of nonspecific statements, which this
15 witness would attribute to Mr. Bradley are too
16 nonspecific to be probative. And the
17 possession of the firearm is meaningless,
18 because it has no relevance to the particular
19 commission of this offense, whereas the
20 possession the day before, or two days before.
21 But at the precise moment of the shooting, of
22 course, it's relevant at that time. So its
23 prejudicial value outweighs the probative
24 value. It's not relevant also.

25 MR. McMASTER: It's certainly relevant

1 as to the issue of premeditation. The fact
2 that months before the shooting, he has taken
3 steps to arm himself, and is prepared to do
4 whatever needs to be done so that he does not
5 go back to jail. It's absolutely relevant.

6 MR. MOORE: There's no connection
7 between the two, though, Your Honor. There's
8 no nexus.

9 THE COURT: I understand. I understand
10 the argument. Okay. At this time I'm also
11 going to take that under advisement, and issue
12 a written ruling with regard to that.

13 Okay, number three.

14 MR. MOORE: Russell Huff. I would
15 imagine that the state attorney --

16 MR. McMASTER: We have no objection to
17 number three.

18 THE COURT: Number three, the motion is
19 granted. And I'm going to do a written order
20 with regard to all of this. Okay. Number
21 four.

22 MR. MOORE: Jeffery Dieguez is a
23 witness who will testify that during, about a
24 30-minute timeframe, he was on the phone with a
25 person he believed was Amanda, was Ms.

1 Kerchner. And that it was started at,
2 approximately, the phone call, whether he
3 called her or she called him, approximately,
4 when the car containing Mr. Bradley and Ms.
5 Kerchner was pulled over. And he's going to
6 testify that he heard the police siren
7 chirping. He heard conversation in the car.
8 He heard a female voice, who he thought was Ms.
9 Kerchner saying words to the effect of, no,
10 baby, you don't have to do this. And then a
11 male voice, which he cannot identify, saying,
12 you don't understand, I'm not going back to
13 prison, she saw my face, I got to shoot her.
14 And, you know, the part that we are asking the
15 Court to keep out would be the statements by
16 the female, which I believe he will say it's
17 Ms. Kerchner, to the effect of, no, you don't
18 have to do this. In addition to it being the
19 province of the jury, it's a statement of hers
20 in which she is giving her opinion, speculating
21 about the thought processes of the defendant.
22 The legal appropriateness of the actions taken
23 by the defendant, the appropriateness of the
24 actions taken by the defendant. And it's
25 entirely speculative on her part. It's

1 entirely irrelevant. And it is for the jury to
2 determine what Mr. Bradley's thought processes
3 were. And whether this is the legally
4 appropriate, or inappropriate, or defensible,
5 or indefensible homicide. It's not Ms.
6 Kerchner opinion about that. And that's what
7 the statements attributed to her amount to.
8 Not only by Mr. Dieguez, but I think there was
9 another witness, Amanda Kerchner, also. And I
10 refer to her in paragraph 11, so four and 11
11 should be taken together, where I think Ms.
12 Kerchner might, if allowed, say, you know, I
13 was telling him, no, you don't have to do this.
14 And, again, that's her opinion, her
15 interpretation of the situation, and that's for
16 the jury to do. She can testify about what she
17 saw and what she heard. But her thought
18 processes about what she thinks Mr. Bradley is
19 thinking, or what she thinks is the appropriate
20 response of Mr. Bradley in the circumstances is
21 not admissible. It's not relevant. It's
22 prejudicial, and it's not probative.

23 THE COURT: Okay. Response from the
24 State.

25 MR. McMASTER: Judge, this was at a

1 time period when there was an open line on the
2 phone, Mr. Dieguez was overhearing the
3 conversation between Mr. Bradley and Ms.
4 Kerchner. These are, certainly, spontaneous
5 statements that are being made. She's not
6 intending for anybody to, actually, be
7 listening in. And they are important to
8 understand in context. In this situation, Mr.
9 Dieguez hears the male say, she saw my face,
10 she got my tag, I got to kill this bitch. And
11 the response from Ms. Kerchner is, no, baby,
12 you don't have to do that, no, baby, you don't
13 have to do that. And shortly thereafter Mr.
14 Dieguez hears the gunshots go off, which,
15 ultimately, mortally wounded Deputy Pill. This
16 is not hearsay. And in any event, Ms.
17 Kerchner, in her deposition testified,
18 essentially, to the same thing, having said
19 those same things to Mr. Bradley at the time
20 that the shooting occurred. So she would be
21 available for cross-examination. The
22 statements are not hearsay. They are
23 admissible as an exception to the hearsay. And
24 we think that they should be admitted.

25 THE COURT: I don't think his issue is

1 hearsay.

2 MR. MOORE: I'm not making a hearsay
3 objection.

4 THE COURT: Right. I think
5 it's relevance, probative --

6 MR. McMASTER: That's what he says in
7 his motion.

8 THE COURT: Pardon me.

9 MR. McMASTER: That's what he says in
10 his motion. His motion says constitutes
11 hearsay.

12 MR. MOORE: Well, all right. So assume
13 it's admissible, it's still an opinion. That
14 is the thrust of my objection. That is her
15 take on the situation, her interpretation of
16 what Mr. Bradley is thinking, what his
17 appropriate actions are, what his inappropriate
18 actions are, what's lawful, what's legal.
19 That's not her call to make. That's for the
20 jury to decide. And so, admissible or not,
21 it's still an opinion by her, which she should
22 not be -- should not be a matter for the jury
23 to hear. That's my objection.

24 THE COURT: Okay. My concern with
25 regard to this motion is I haven't had an

1 opportunity to review this. So I'm not going
2 to, you know, make rulings today. Also, I want
3 my rulings to be in writing, so that you have
4 that information in front of you. So with
5 regard to this as well, this pertains to 14 and
6 11.

7 MR. MOORE: No, four and 11.

8 THE COURT: I'm sorry, four and 11.
9 I'm going to take that under advisement. Okay.

10 MR. MOORE: Number five.

11 MR. McMASTER: State has no objection
12 to number five or number six.

13 THE COURT: Okay. Number five and
14 number six.

15 MR. MOORE: Number seven, the
16 defendant's cell account number is hooligan
17 baby.

18 MR. McMASTER: That's just a fact.

19 MR. MOORE: Well --

20 THE COURT: Okay. Hold on just a
21 second. I want the record to be clear. With
22 regard to number five and number six, the
23 motion is granted. Okay, go ahead.

24 MR. MOORE: Number seven. The
25 defendant's cellphone account name was hooligan

1 baby. It may be fact, but it's not a relevant
2 fact. It's not a probative fact. It's a
3 prejudicial fact. And that's the only reason I
4 can think that the State would want that in.
5 But it's not admissible just because it's a
6 fact.

7 THE COURT: Okay. Response from the
8 State.

9 MR. McMASTER: Judge, I don't have any
10 problem deleting that or redacting that out of
11 the records as long as the defense is not
12 trying to argue that this number is not
13 associated with the defendant.

14 THE COURT: I didn't hear that. I just
15 heard that the name was the name. So number
16 seven will be granted.

17 MR. McMASTER: Are they going to agree
18 or stipulate that the records are related to,
19 or it's phone number?

20 MR. MOORE: I'm not going to commit to
21 a situation that I can't entirely anticipate.
22 When the time comes and the State makes a
23 proper predicate, a proper showing, and if
24 there's nothing to object to, I won't object.
25 But I'm not waiving objections in the future,

1 just without -- just across the board. I can't
2 do that. What I'm objecting to is very
3 specific here, and I think the Court has ruled
4 on that.

5 THE COURT: Response from the State.

6 MR. McMASTER: Judge, the records say
7 what the records say. I mean, I will stipulate
8 that the records that we have for the phone
9 number that is associated with Mr. Bradley come
10 back showing the account out of New York in the
11 name of hooligan baby.

12 THE COURT: Okay. With all due
13 respect, I don't know all the facts of the
14 case. The --

15 MR. MOORE: Hooligan baby doesn't mean
16 anything to the jurors. It means a phone
17 number.

18 THE COURT: The only way they can match
19 the phone number up to the defendant, they can
20 lay a foundation. That's what I'm --

21 MR. MOORE: Well, I mean, I can think
22 of ways that can be done without referring to
23 the account name as hooligan baby. I can think
24 of a lot of ways to do that. It has to do with
25 phone numbers, not nicknames.

1 THE COURT: Okay. What I'm going to do
2 at this time, I'm going to grant the motion,
3 but it is without prejudice to the State to
4 readdress.

5 Okay. Number eight.

6 MR. MOORE: Number eight has to do with
7 the origin of the firearm that was used in the
8 shooting death of Deputy Pill. At some time
9 before, like, a few months before the shooting,
10 it was owned by a gentleman who left it in his
11 glove compartment, and then it was stolen by a
12 William Marks, who then claims he sold it to
13 the defendant for crack cocaine and cash. And
14 the gloss on the circumstances of how the gun
15 came into the hands of the defendant is
16 entirely irrelevant and prejudicial, and it's
17 not probative of anything in this case.

18 Because the firearm was, in fact, ballistically
19 matched to the rounds that were retrieved, were
20 matched to the gun that was found in the car.

21 There was only one gun. The State has Mr.
22 Bradley's confession where he admits to the
23 shooting with the gun. They have Ms. Kerchner,
24 testifying that she was present when Mr.
25 Bradley fired the gun. There is a videotape

1 showing an African American hand holding a gun
2 in a car in which the only two people, in a 30
3 minute time period, are Mr. Bradley who is in
4 the driver's seat, and Ms. Kerchner. And
5 during audio portion of the video portion of
6 the shooting, Deputy Pill is heard to say, sir,
7 you need to pull over, sir, not ma'am, but sir.
8 And then an African American hand is seen
9 holding the pistol and firing the pistol. And
10 so to say that it's necessary for the State to
11 then prove that that gun had been stolen, and
12 then sold for crack cocaine to Mr. Bradley
13 establishes him as a drug dealer, and stealing
14 and buying stolen weapons. And there's no need
15 for that. It's not probative, it's
16 prejudicial, which is the only reason that it's
17 being offered is for the fact that they're
18 establishing that he's a drug dealer, and
19 buying stolen firearms for crack cocaine. It's
20 not probative, it's highly prejudicial. It's
21 not necessary for the State to do that.

22 THE COURT: Okay. Response from the
23 State.

24 MR. McMASTER: Judge, all incriminating
25 evidence is prejudicial. That's the whole

1 point of having the evidence in the first
2 place. With respect to the fact that this
3 incident led, ultimately, to the murder of
4 Deputy Pill, it is, clearly, relevant and
5 important to the case because it puts the
6 murder weapon directly into Mr. Bradley's
7 hands. I believe it was November 26th or 27th
8 of 2011 when it was reported stolen. And Mr.
9 Marks, the person, the brother of the victim's
10 sister, was visiting them, stole it from them.
11 And he claims later that same day, sold to a
12 person that he knew as Boogy, who had been
13 selling him crack cocaine for over a year,
14 which is how he knows him, which is why all of
15 those facts are highly relevant, even though
16 they would, under most circumstances, be
17 somewhat prejudicial. In this case it's,
18 obviously, important because Mr. Marks
19 identifies a photograph of Mr. Bradley as
20 being Boogy, the person that he sold the gun
21 to, and does so from a media photograph that
22 had been published after Mr. Bradley's arrest
23 for the murder of Deputy Pill. So it's the
24 State's position that it is inextricably
25 intertwined with the facts of this case. It's

1 highly relevant to put the murder weapon in his
2 possession, and it should be admitted.

3 MR. MOORE: It doesn't increase the
4 likelihood or the probability of Mr. Bradley
5 being the person who shot that. It doesn't
6 increase it or decrease it. It's like flipping
7 a coin, I mean, you can flip it a hundred
8 times, and it will always be a 50/50
9 proposition. And you can get a hundred heads
10 in a row, and the chance of getting a heads on
11 the 101st time is still 50/50.

12 A gun is found in the car, Mr.
13 Bradley's statement to the police puts the gun
14 in his hand. Ms. Kerchner's statement puts the
15 gun in his hand. The videotape puts the gun in
16 the hand of an African American when there's
17 only one of those in the car. And so what the
18 State is offering this for is purely for the
19 stolen gun aspect, which is being purchased by
20 Mr. Bradley for crack cocaine, making him a
21 crack cocaine dealer, on top of everything
22 else. And that's the only reason the State is
23 seeking to put that in. It's prejudicial, it
24 not probative. It's outweighed. The probative
25 is outweighed by the prejudicial.

1 THE COURT: Okay. I'm going to take
2 this under advisement, and issue a written
3 order. And then number nine.

4 MR. McMASTER: It's related to number
5 eight, Judge.

6 THE COURT: It is related to number --
7 everyone agree that number nine is related to
8 number eight? Anything else with regard to
9 that, argument with regard to that?

10 MR. McMASTER: No, Your Honor.

11 MR. MOORE: Well, how it is relevant or
12 probative in this case if the defendant, on a
13 regular basis, sold crack cocaine to Robert
14 Marks? Even if the State prevailed, and they
15 shouldn't on a one time crack deal where Mr.
16 Bradley gives crack to Mr. Marks, and Mr. Marks
17 gives up the gun, how does that make it
18 relevant to expand that to all the other
19 cocaine dealings between the two? That goes
20 way far afield of whatever uses they claim
21 they're trying to make of that one-time
22 transaction.

23 THE COURT: It says any testimony. Is
24 there testimony by Mr. Marks, or is there other
25 testimony with regard to defendant --

1 MR. MOORE: Well, you know, I don't
2 know what's going to pop out of whose mouth. I
3 would expect Mr. Marks would be the primary
4 source. But for him to say, yeah, he sold me
5 crack all the time, how is that relevant in
6 this case? It isn't. You know, a one-time
7 deal doesn't --

8 THE COURT: I understand, but I'm --
9 for purposes of clarifying the Court's ruling.

10 MR. MOORE: I would expect it to come
11 from Mr. Marks.

12 MR. McMASTER: I agree that it would
13 only come from Mr. Marks, Judge.

14 THE COURT: Like I said, I don't know
15 the facts of the case as well you all do, so.

16 MR. McMASTER: The State submits that
17 it's necessary just to establish the basis for
18 Mr. Marks identification of Mr. Bradley.

19 MR. MOORE: He can say that he saw the
20 man before. He doesn't have to say in what
21 context and what they're doing. But, again, I
22 mean, if he's able to pick him out of a lineup,
23 the activity, the illegal activities that he
24 engaged in on various occasions does not lend
25 credibility to Mr. Marks. It certainly is

1 highly prejudicial to the defendant, to Mr.
2 Bradley.

3 THE COURT: Okay. Mr. McMaster.

4 MR. McMASTER: With respect to number
5 ten, Judge.

6 MR. MOORE: What the Court's position
7 on nine?

8 THE COURT: Okay. With regard, I've
9 viewed these, eight, nine, and ten, and believe
10 that they are all somewhat related. Unless
11 there's something else with regard to ten.
12 Like I said, I don't know the facts of the
13 case.

14 MR. McMASTER: With respect to number
15 ten, the State has no objection to granting it
16 insofar as testimony regarding the defendant
17 being a gang member, or that the defendant
18 wears colored bandannas, or gang emblems, or
19 gang insignia. We do object for the same
20 reasons we were arguing with eight and nine,
21 and the first part of ten that the defendant is
22 a drug dealer and the defendant is known to
23 carry guns, we do believe that that's relevant.

24 THE COURT: Okay. Do you expect that
25 testimony to come from anyone other than Robert

1 Marks?

2 MR. McMASTER: It may well come from
3 Ms. Kerchner. I think the two of them were
4 doing quite a bit of drugs together. In fact,
5 I think you'll see that the basis for the phone
6 call to Mr. Dieguez was that Ms. Kerchner was
7 attempting to find someone to buy heroin.

8 MR. MOORE: Well, that means Ms.
9 Kerchner is a drug dealer, not Mr. Bradley.
10 That's the reason for the conversation between
11 Kerchner and Dieguez was that Kerchner was
12 trying to sell heroin, not Mr. Bradley.

13 MR. McMASTER: I'm sorry, Mr. Moore, I
14 thought somewhere along the line one of the
15 witnesses said that the drugs belonged to him
16 and she was selling for him, but either way.

17 THE COURT: Okay. I'm going to take
18 all of these under advisement. And I'll
19 address them in a written ruling, which I'll
20 talk about the date in a few minutes.

21 Okay. I think we're on number 12.

22 MR. McMASTER: The State has no
23 objections to paragraphs A, B, or C. We can
24 remove those from the recorded interview of Mr.
25 Bradley. We do disagree about the paragraph D.

1 THE COURT: Okay, so Mr. Moore, if
2 you'll address D.

3 MR. MOORE: Sure. Paragraph D comes at
4 the tail end of the interrogation of Mr.
5 Bradley by Spadafora and Simic. And it amounts
6 to a monologue where at the end of about an
7 hour and a half, two-hour questioning of Mr.
8 Bradley, Agent Spadafora sums it up and says,
9 this is what I think happened, this is what I
10 think you were doing, this is what I think you
11 intended, and, you know, it was wrong, and, you
12 know, words to that effect. Then he says, you
13 know, we're done. And then he leaves. So it's
14 not about questioning. It's about Agent Spa --
15 and then he leaves, and that's the end of it.
16 And so it's not about questioning by Agent
17 Spadafora, or a response, or trying to initiate
18 a response by Agent Spadafora, getting some
19 things off his chest, and expressing his point
20 of view, which he has a right to do, but it has
21 no part in coming into the evidence in this
22 case. And a case, which is right on point is
23 the Sparklin case, which I didn't bring a copy
24 of.

25 THE COURT: Sparkman?

1 MR. MOORE: Sparklin, Sparklin versus
2 State at 902 --

3 THE COURT: Hold on a second.

4 MR. McMASTER: The State agrees to
5 paragraph C.

6 THE COURT: No, this is -- I was
7 under --

8 MR. MOORE: No, C.

9 MR. McMASTER: No. He's reading
10 paragraph C.

11 MR. MOORE: Oh, oh, oh, okay, I'm
12 sorry.

13 THE COURT: Okay.

14 MR. MOORE: D. All right.

15 THE COURT: Okay.

16 MR. MOORE: So D has a portion of the
17 interrogation where Agent Spadafora asks the
18 defendant about his ability to read and perform
19 the simplest tasks to establish the defendant
20 does not suffer from mental disabilities, like,
21 can you read, do you understand what you read,
22 you know, you know, basic questions that most
23 people can do with a first grade education.
24 And then he says, well, I don't, you know, in
25 his non-expert opinion, Agent Spadafora then

1 says, I don't think you have mental
2 disabilities, do you. And, you know, Mr.
3 Bradley is equally in the dark about what
4 constitutes mental disabilities. In fact,
5 there are some people who have the expertise
6 who have evaluated Mr. Bradley who believe he
7 does have mental disabilities. But Mr. Bradley
8 is not qualified to make that call, and neither
9 is Agent Spadafora. And so that portion of the
10 interview constitutes expert testimony, or,
11 certainly, misleading lay testimony. It
12 appears to offer some algebra that Agent
13 Spadafora has just, kind of, dreamed up on the
14 spot to establish that Mr. Bradley is fine
15 mentally. And so it constitutes a mental
16 evaluation in a poor man sort of way. And it's
17 misleading to the jury. It's a confusion of
18 issues. It's not probative of anything. And
19 if anything, it just shows Mr. Bradley willing
20 to follow the lead of the police at that point.
21 But it's a misinformed attempt by Agent
22 Spadafora to establish, to try to eliminate, I
23 suppose, any type of insanity defense, or any
24 type of mental disability that the defense
25 might use.

1 THE COURT: Okay. Response from the
2 State.

3 MR. McMASTER: Judge, I think this one
4 is difficult to respond to in the general terms
5 that it's been described by defense counsel.
6 The State did have a transcript prepared of Mr.
7 Bradley's interview. I would be happy to
8 provide the Court with a copy of the
9 transcript. We previously provided it to the
10 defense.

11 THE COURT: Is it better than the
12 transcripts that I saw before?

13 MR. McMASTER: I think it's better,
14 Judge. The Court can read, but, in essence,
15 it's the State's position that with respect to
16 that portion of the interview, Agent Spadafora
17 was attempting to find out, from the defendant,
18 whether or not he had ever been treated or
19 diagnosed with mental illnesses. That's what
20 the questions were designed for. All right.
21 And the defendant, in fact, is denying that he,
22 either, had been diagnosed, or had treated for
23 any type of mental illness.

24 In a case where the defense is
25 asserting mental infirmities or illnesses, or

1 some type of psychological problems, judging
2 from the expert reports we've received from the
3 defense, it's highly relevant information. So
4 I would suggest that the Court reserve on this
5 one, that you take a look at the transcript
6 itself, and you'll see that no one is asking
7 for professional opinions. They are asking for
8 factual information about what type of
9 treatment or diagnosis he may have received in
10 the past. And, in any event, I believe that
11 the defendant's testimony about whether he
12 suffers from mental illness is admissible.

13 THE COURT: Mr. Moore.

14 MR. MOORE: To the extent that --

15 THE COURT: No. I want to review the
16 transcript or, at least, review the DVD. Is
17 the transcript accurate? Have you had an
18 opportunity to look at that?

19 MR. MOORE: Yes, I did.

20 THE COURT: And, with all due respect,
21 the prior transcript in Ms. Kerchner case was
22 not as accurate as I would have expected it to
23 be.

24 MR. MOORE: Yeah, I would be
25 comfortable with the Court relying on that, but

1 I want to make it clear --

2 THE COURT: Okay.

3 MR. MOORE: -- if what's being
4 discussed is, have you been treated before, I
5 don't have a problem with that, the questions
6 and the answers. But do you believe you have,
7 if Agent Spadafora says, I don't think you have
8 mental illness, and Mr. Bradley says, I don't
9 think I do either. That's the focus of my
10 objection, not have you been treated. You can
11 have mental illness and not be treated for it.
12 That's beside the point. I'm not objecting to
13 any discussion about prior treatment. It's
14 just the existence of it or nonexistence of it
15 in the opinion of Mr. Bradley and Agent
16 Spadafora. That's what I'm objecting to.

17 THE COURT: Okay. Mr. McMaster, do you
18 have that transcript?

19 MR. McMASTER: I don't have it with me,
20 Judge. I can get it to you.

21 THE COURT: Okay. With the witness
22 list tomorrow can you get me that?

23 MR. McMASTER: Yes, ma'am.

24 THE COURT: Okay. Because it's not
25 very long, I would imagine.

1 MR. McMASTER: Not this portion of it.

2 THE COURT: Right.

3 MR. McMASTER: I'll give you the entire
4 transcript, but this portion is right toward
5 the very end.

6 THE COURT: Okay. All right. Then
7 I'll take that under advisement. I want to
8 review the transcript. And I'll take that
9 under advisement.

10 Okay. We have motion in limine number
11 four with regard to Detective Gregory
12 Guillette.

13 MR. McMASTER: Guillette.

14 THE COURT: See, that's why I need to
15 look at that witness list ahead of time.

16 MR. PIROLO: Judge, I guess the Court
17 got a copy of that motion.

18 THE COURT: I did see this one.

19 MR. PIROLO: Did you also get a copy of
20 the deposition transcript?

21 THE COURT: I did have that as well,
22 yes.

23 MR. PIROLO: Okay. And may I approach
24 with some case law, Your Honor?

25 THE COURT: Yes, sir.

1 MR. MOORE: I have a copy for the State
2 as well. These are the same cases that are
3 cited in the motion. It's pretty much what we
4 have is Detective Guillette put together a
5 packet, and gave it to us in Discovery. The
6 packet contained photographs of the, basically,
7 stills, photographic stills from the video from
8 Deputy Pill's patrol car. The photographs
9 were, essentially, photo-shopped to show
10 different colors, contrast. It almost made it
11 look like it was a thermal image. It wasn't a
12 thermal imaging, as Detective Guillette
13 explained in his deposition, pretty much, he
14 put it through several programs that he
15 acknowledged that any non-expert can do. It's
16 programs that we have in our computers today,
17 Windows, ability to photoshop, just generic,
18 sort of, programs. And he tried to use those
19 to show a number of things. But for the most
20 part, he's using it to show the occupants in
21 the white SUV. How many occupants, whether or
22 not there was any occupants in the back seat,
23 their physical characteristics like hair, skin
24 color, race, gender, and their location within
25 the vehicle, whether or not a male was seated

1 in the driver's seat, and if the female was
2 sitting in the passenger seat. His conclusion
3 is that he believes that the defendant was
4 seated in the driver's seat. And that there
5 was no one else in the back of the SUV. The
6 only two people in the car are Mr. Bradley and
7 Ms. Kerchner. And this is all provided from
8 the dashboard camera from Deputy Pill's patrol
9 car. And it's just that it's a generic camera.
10 It's not a thermal imaging camera. It's an
11 ordinary videocamera.

12 So our objection, and what we're asking
13 the Court to keep out from Detective
14 Guillette's testimony are, essentially, what he
15 sees through these photographs, and through him
16 watching the video, that he sees a male seated
17 in the driver's seat, that he can see a female
18 that's not in the driver's seat, that he can
19 make out the physical characteristics of the
20 driver. Judge, that really invades the
21 province of the jury. It's a videotape. We
22 believe the State is going to play the
23 videotape. The jurors are the finders of fact.
24 They need to look at the videotape and make
25 those decisions.

1 And the cases that I have provided, the
2 Charles case, and the Ruffin case. Charles is
3 from the 4th DCA, 79 So.3d 233. Charles versus
4 State is from February 15th, 2012. In this
5 case there was a detective that testified about
6 the contents of a surveillance video, that
7 whether or not the person in the surveillance
8 video was the defendant. And the Court,
9 ultimately, reversed the conviction and talked
10 about the opinion testimony of the detective,
11 the defendant was the person who was in the
12 surveillance video invaded the province of the
13 jury. On the last page of that opinion, and I
14 believe the copies I gave to the State and the
15 Court are also highlighted. Starting in the
16 left hand column, talks about, gets into as in
17 Ruffin, the testifying officer was not an
18 eyewitness. Detective Guillette is not an
19 eyewitness to anything that is depicted on the
20 videotape. He had no special familiarity with
21 the appellant. And he was not qualified as an
22 expert in video identification. The jurors
23 should have been left to determine for
24 themselves whether the appellant was the person
25 in the surveillance video. The error in

1 admitting the officer's identification
2 testimony was not harmless. Error in admitting
3 improper testimony may be exacerbated where the
4 testimony comes from a police officer. And
5 they cite a Florida Supreme Court case from
6 2000, Martinez case, 761 So. 2d 1074. There is
7 the danger the jurors will defer to what they
8 perceive to be an officer's special training
9 and access to background information not
10 presented during trial.

11 And, actually, in our case, Detective
12 Guillette was pretty forthcoming that his
13 observations are not scientific. They're not
14 expert observations. He, throughout the
15 deposition, indicated that any person watching
16 it would come up with the same observations,
17 you know, would see this same observations that
18 he did. There's no specialized training or
19 knowledge.

20 And that gets me to the Conway case and
21 the Daubert case that I have given to the
22 Court. Obviously with Daubert, we're familiar
23 with it. Supreme Court United States, 113
24 Supreme Court 2786 from 1993. They're now
25 following the Daubert standard for expert

1 testimony. In the Conway case, which is pretty
2 new, it's from December of 2013. It's 2013
3 Westlaw 670 3503, Conway versus state out of
4 the 1st DCA. They, obviously, cites the
5 Daubert case, talk about Daubert now being the
6 standard in Florida. And Daubert involves
7 scientific, technical, or specialized
8 knowledge. This particular testimony Detective
9 Guillette wants to get into, it's not
10 specialized, it's not technical, it's not
11 scientific.

12 And, in addition, Judge, under Section
13 90.701 Florida Statutes, that's the opinion
14 testimony of lay witnesses, if Detective
15 Guillette is testifying as a lay witness, that
16 has to come from something that a person has
17 actually perceived. Detective Guillette hasn't
18 perceived anything that is depicted in the
19 video or in the photographs. He is watching it
20 as everyone else did, after the fact. And,
21 again, under 702, testimony by an expert, it's
22 very clear by his deposition that he is not
23 considering himself an expert in this area, nor
24 is he considering his conclusion to be an
25 expert opinion. He even indicated it's not an

1 opinion, it's just an observation. And that's
2 fine that he has that observations, and his
3 conclusion of it, but what's important in our
4 case is that the jury makes that finding, not
5 Detective Guillette.

6 A couple of points, during his
7 deposition, page five of his deposition, it
8 starts on line 13, and it goes through 17.
9 He's asking, in reading this report I didn't
10 see what your opinions were. And he answered,
11 my job isn't to generate opinions. My job is
12 to analyze the data, produce my results to the
13 state attorney or to the detective. And again,
14 throughout, he indicates that it's just general
15 observations that he's making. Further on in
16 the deposition, page 12 through 13. Page 12
17 starts with line 22, he's asked the question:
18 Is there any scientific or whatever, other term
19 you want to use in the context of what you did
20 significance to your opinions, that is, were
21 they arrived at scientifically, or were you
22 just looking at a photograph, and saying I
23 don't see heat signature, which in my opinion,
24 would indicate a person being in the back seat.
25 In this particular picture, the answer is, it's

1 observation. The next question, would that be
2 true of all the photographs, which you have
3 taken from the video, where you have arrows
4 pointing to various parts of the car with what
5 appears to be your observations. Answer, yes.
6 So they were just observations on your part.
7 Yes, sir. Do you require any expertise or any
8 specialized training to make those
9 observations. The answer is, I don't believe
10 so.

11 And it goes on and on throughout the
12 deposition. Again page 15 and 16, where he
13 keeps on acknowledging that these are just
14 observations he makes with his own two eyes,
15 basically, as a civilian, and not as a
16 highly-trained expert with any law enforcement
17 agency. So we're asking that the Court
18 prohibit Detective Guillette from giving any
19 kind of testimony, opinion, or otherwise. That
20 what you see on the photographs, the
21 photographic stills from video that he sees an
22 African American in the driver's seat. That he
23 doesn't see anyone else in the car other than
24 Mr. Bradley and Ms. Kerchner. That is a jury
25 question. And only the jury should make that

1 opinion or that finding. That's all I have,
2 Judge.

3 THE COURT: Let me be clear with regard
4 to the facts. Detective Guillette didn't make
5 any independent observations? It was just
6 based on what he viewed from the video?

7 MR. PIROLO: Right.

8 THE COURT: Okay. All right, Mr.
9 McMaster.

10 MR. McMASTER: Judge, the State never
11 intended to have Detective Guillette testify
12 about his opinions, or conclusions as to what
13 the photographs show. We provided Detective
14 Guillette with a copy of the original in-car
15 video from Deputy Pill's vehicle, and asked
16 him, as a forensic analyst, to do whatever he
17 could do to clarify the images to focus in on
18 the particularly relevant parts of the video,
19 because I think the overall video was an hour
20 or something. There are certain portions
21 regarding the shooting. Other portions were,
22 it appears to be possible to look inside the
23 vehicle to see who the occupants are, how many
24 occupants there are, where they're seated,
25 things of that nature. The intent was to have

1 him produce still photos, slow-motion video,
2 whatever he could to help the jury focus on the
3 video itself and come to their own conclusion.

4 He did submit a report that, obviously,
5 misled the defense as to what we intended the
6 use of Detective Guillette to be, where he put
7 a number of different photos with his
8 conclusions with arrows pointing to certain
9 parts. It's not the State's intention to try
10 to introduce any of those, or to have him
11 testify about his conclusions that are shown on
12 those photographs.

13 Rather, we would have Detective
14 Guillette testify, as a forensic analyst, how
15 it is that he used particular computer programs
16 to one, produce the still photos that he
17 produced, a series of 137 photos, which the
18 State has had printed out professionally, and
19 we intend to submit into evidence based on the
20 photos that were produced from his stills that
21 he created through his computer program. He
22 created a slow-motion video, a slow-motion
23 portion relating to the eight or nine-second
24 clip that depicts the shooting. And he's,
25 also, I think, a regular speed video with a

1 zoomed in. At trial we expect him to testify,
2 as a forensic analyst, to explain the computer
3 enhancement process, and establish that the
4 images are not altered or edited. Computer
5 enhanced photographic still prints made from
6 the surveillance state are admissible. That is
7 the extent of the State's expected testimony.

8 I did submit a case to the Court and to
9 the defense, it's a 4th DCA case, Roger Doland
10 versus State. It should be in the packet of
11 the cases that I gave you. It should be in the
12 packet that I gave to Mr. Moore. I have
13 another copy here, Mr. Pirolo.

14 So to the extent that Mr. Pirolo is
15 arguing that Detective Guillette should not be
16 able to express his opinions about what the
17 photographs show, the State agrees with him.

18 To the extent that he wants to prevent
19 any testimony from Detective Guillette, I
20 object. Detective Guillette has been accepted
21 as an expert forensic analyst in numerous
22 courts. And is going to testify by the process
23 of producing the video clips and the stills
24 that the State intends to use.

25 THE COURT: Okay. With that

1 clarification from the State, response from the
2 defense.

3 MR. PIROLO: Well, again, Judge, my
4 motion was specific as to his testimony
5 regarding what --

6 THE COURT: His opinion?

7 MR. PIROLO: His opinion to what he
8 sees in the car, who's in the car, how many
9 people are in the car. But I -- so I'll take
10 the State's stipulation or agreement to that.
11 I don't want to stipulate and say we're not
12 going to object, I'm not waiving any other
13 objections I'm going to be making as part of
14 his testimony in terms of what enhancements he
15 did or did not make to any videos or
16 photographs.

17 THE COURT: Okay. It appears that the
18 State's agreeing that the motion in limine
19 number four is granted as to his opinion
20 regarding what he saw.

21 MR. PIROLO: That's fine, Judge. I
22 just want to make sure that you don't take it
23 that we're waiving any other objections that
24 come up during his testimony.

25 THE COURT: No. I understand that,

1 yes.

2 MR. LANNING: Could I make an inquiry
3 as to the photographs that he reportedly
4 inverted into some kind of heat signature, is
5 the State's stipulation not intending to
6 introduce any of those?

7 MR. McMASTER: No.

8 MR. LANNING: No, what?

9 MR. McMASTER: We're not stipulating
10 that that we would not use those. What he's
11 referring to is one of computer enhancement
12 stills where they, basically, reverse the
13 colors, and it appears to come out as a photo
14 negative. It's the State's intention to have
15 Detective Guillette testify about that process
16 and how this photograph was produced.

17 MR. LANNING: Dalbert or Daubert issue.

18 THE COURT: I haven't -- that's not
19 before the Court. What was before the Court is
20 with regard to opinion testimony.

21 MR. PIROLO: And that's fine, Judge.
22 Again, I just want to make it clear that we're
23 not waiving any objections.

24 THE COURT: Okay. No, you're not
25 waiving any objection with regard to other

1 testimony from Detective Guillette.

2 Okay. If -- with regard to these
3 motion in limines, if the Court were to rule --
4 let me see a calendar. I don't think you would
5 need them for purposes of the jury selection.
6 I will rule on or before with a written order,
7 by February 28th. I think that gives everyone
8 plenty of time to prepare for openings.

9 MR. MOORE: Sure.

10 THE COURT: Okay. Now, I have some
11 other issues that I want to address. Okay.
12 Any other motions that are outstanding on
13 behalf of the defense?

14 MR. MOORE: Not at this time.

15 THE COURT: Other motions on behalf of
16 the State?

17 MR. McMASTER: None.

18 THE COURT: Okay. I -- for the record,
19 there was no motions to suppress as to the
20 evidence or statements filed by the defense. I
21 previously discussed the strategy with the
22 attorneys by way of a bench conference. At
23 that time I denied the State's request to
24 question the defendant directly, and to make
25 inquiry if he agrees with the attorneys'

1 strategy in not filing any motions to suppress.

2 With all due respect, I've reconsidered
3 that ruling, and I do intend to question the
4 defendant on this subject. Now, does the
5 defense need to take a few minutes to confer
6 with the defendant before I question him.

7 MR. MOORE: Well, we respectfully
8 object. We certainly object to it. The Court
9 is going to do what it feels is appropriate.
10 Yeah, I need a minute to talk to Mr. Bradley
11 about what the Court proposes to do.

12 THE COURT: Okay, if you'll take a
13 moment. I will go. I will turn your mic off.
14 I'm going to go off the record just so no mics
15 are on, and you can confer with Mr. Bradley.

16 (Thereupon there was a recess)

17 THE COURT: Yes, sir. We weren't on
18 the record, so if you will repeat that on the
19 record.

20 MR. MOORE: Right. I had a chance to
21 review that with Mr. Bradley, again. And with
22 all due respect, we object to the Court
23 inquiring about any discussions he and I had
24 about it.

25 THE COURT: Okay. I'm going to address

1 Mr. Bradley directly.

2 Mr. Bradley, your defense counsels have
3 made a strategic decision not to file a motion
4 to suppress as to evidence or statements in
5 this case. In this case, are you aware of
6 that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Has your counsels discussed
9 this with you?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Do you agree with the
12 strategy of -- not -- of their strategy not to
13 file a motion to suppress statements and
14 evidence in your case?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Okay. All right. I do
17 have a copy of the charging document that I
18 intend to read to the jury. I want you to
19 review -- I want the attorneys to review it.
20 There should be two for the State and four for
21 the defense. You'll take a moment to look at
22 that. Specifically, I want you to -- in just a
23 few moments, after you've got an opportunity to
24 review it, I want to discuss the defendant's
25 name. Let me know when you've had an

1 opportunity to review it.

2 MR. MOORE: Okay.

3 THE COURT: Okay. Mr. Moore, in
4 referring to Mr. Bradley, the Information
5 provides Brandon Lee Bradley also known as
6 Brandon Lee Brantley. Do you want me to read
7 the charges that way in reference to his name?

8 MR. MOORE: Your Honor, the confusion
9 is his birth name is Brantley, Brandon Lee
10 Brantley. And somewhere along the way, in the
11 criminal justice system, he became known as
12 Brandon Bradley. And that's just the way the
13 justice system does it. That's the name he
14 prefers to go by. And if it will simplify
15 things, we'll stipulate that, for simplicity
16 sake, that he is to be referred to as Brandon
17 Lee Bradley, and that Brandon Lee Bradley is
18 the defendant, so there is no confusion about
19 that. And throughout all the depositions, I
20 didn't hear anybody else refer to him as
21 Brantley. Although there were a few law
22 enforcement officers who said there was some
23 confusion about whether it was Brantley or
24 Bradley, but they all knew him as Bradley. So
25 we don't object to it being modified to Brandon

1 Lee Bradley. And we will stipulate, we will
2 agree that Brandon Lee Bradley is the
3 defendant.

4 THE COURT: Okay. Does the State
5 accept that stipulation?

6 MR. McMASTER: Yes, Your Honor.

7 THE COURT: Okay. Then when we,
8 throughout the trial, we won't say Brandon Lee
9 Brantley also known as Brandon Lee Brantley,
10 we'll refer to the defendant as Brandon Lee
11 Bradley. Okay. And is the way the Court
12 intends to the -- I already granted the
13 defense's motion in limine with regard to not
14 referring to it as a grand jury indictment. I
15 was just going to say the charges are. Does
16 the State agree to the charges, to read the
17 charges to the jury as outlined in this
18 document?

19 MR. BROWN: That's fine with the State,
20 Judge.

21 THE COURT: Okay. Does the defense
22 agree?

23 MR. MOORE: Yes, Your Honor.

24 THE COURT: Okay. All right. One of
25 the preliminary instructions advises the jury

1 as to defendant's right to remain silent. Does
2 the defendant wish the Court to give this
3 instruction?

4 MR. MOORE: Yes.

5 THE COURT: Okay. I want to talk about
6 time allowances. It is my understanding that
7 the trial is currently scheduled to begin with
8 jury selection on Monday, February 24th, and go
9 through Friday, March the 28th. Now, there are
10 some dates that are excluded. And I assume
11 this, I'm making the assumption, however no one
12 has confirmed that, and, perhaps, I made this
13 assumption, that that includes the guilt and
14 penalty phase, if necessary. Does the State
15 agree that that -- because I need to discuss
16 this with the jury, the jury pool, for purposes
17 of whether they're available, and for purposes
18 of hardship. Does the State agree with that
19 trial schedule?

20 MR. McMASTER: Judge, since we have --
21 the first week of all jury selection have
22 different panels of jurors coming in each of
23 those five days, we're, obviously, highly
24 unlikely to get the jury the first week. The
25 second week the Court is out for the first

1 three and a half days, which would be --

2 THE COURT: Well, the half day, with
3 all due respect, March the 6th, I was
4 requested -- I could be here March the 6th at
5 nine a.m., but I was requested not to start
6 court until the p.m. And that was a request
7 that came from the family, and the Brevard
8 County Sheriff's Office, because that is the
9 anniversary of her -- of the death of Deputy
10 Pill, and, apparently, there is a memorial
11 dedication service in the morning. And so, I
12 know that there is people that wanted to be
13 present for that, and they asked if I would
14 start court in the afternoon, and I granted
15 that request.

16 MR. McMASTER: Thank you, Judge. I
17 would expect the earliest we're going to get
18 the jury then, is going to be Friday the 7th.

19 THE COURT: I mean, if they're -- with
20 all due respect, if we weren't going to start
21 opening statements until the afternoon, we
22 could start at nine a.m. on March the 6th, and
23 continue with the jury process.

24 MR. MOORE: Judge, I really don't --
25 getting down to times of days on specific days

1 of the week, I think that's way too optimistic.
2 I don't, you know, I just have a gut feeling,
3 and just my experience is telling me that we're
4 not going to have a jury that week. We'll do
5 our best.

6 THE COURT: Okay.

7 MR. MOORE: But I think saying let's
8 start at nine a.m. on the 7th with opening
9 statements is, I think, is just a little too
10 ambitious, I think.

11 THE COURT: Maybe I'm being ambitious,
12 but I want to give everyone, you know, a
13 schedule to shoot for. I'm not saying I'm
14 going to hold you to that schedule, but, you
15 know. I know that there's witnesses that have
16 to be coordinated, and things of that nature,
17 I'm trying to give you all some idea of what my
18 expectation is.

19 MR. MOORE: Sure.

20 THE COURT: Obviously, like I said, it
21 could take longer. I think we'll know by the
22 first three days where we're going to be at.
23 It, probably, would be more realistic, but.

24 Mr. Lanning, did you have something?

25 MR. LANNING: Regardless of where we

1 are with the request for March 6th, I think,
2 that, probably, should be honored.

3 THE COURT: Okay. I didn't --

4 MR. LANNING: I had an impression the
5 Court was possibly doing --

6 THE COURT: I did grant it because it
7 was in reference to, they wanted -- there were
8 certain people that wanted to be present for
9 opening statements, it was -- they want to make
10 sure they're here for opening statements. I'm
11 not sure if we're still in the jury process of
12 selecting the jury, that it would be, you know,
13 with all due respect, let's just grant it, so
14 that there's not any --

15 MR. MOORE: You know, it's not -- an
16 issue.

17 THE COURT: So that it won't be an
18 issue. I don't know who's going to be present,
19 who's not going to be present. So we won't
20 have court the morning of June the 6th, I mean,
21 of March the 6th. Okay. And then court will
22 start at 1:30, but we'll discuss that when we
23 recess next Friday, again, next Friday.

24 MR. McMASTER: Judge, in looking at the
25 schedule, assuming that we don't get started

1 with testimony until the 10th, I would hope
2 that we would be able to finish our case in
3 chief in the first two weeks, but, possibly,
4 into the third. I know the defense has a
5 number of witnesses to call. Assuming that we
6 are proceeding to a penalty phase, we might
7 very well go into April. And I see that the
8 first week of April is a three-day period that
9 you will be unavailable.

10 THE COURT: You know, with all due
11 respect, I thought this case was going to be
12 tried in February and March. I have no time
13 off after April 7th until July 1st. I could
14 really try it April 7th until July 1st. I have
15 absolutely no days off. These other events
16 coordinate with things that involve my child's
17 schedule, so.

18 MR. McMASTER: I'm not faulting the
19 Court, I'm just making an observations that if
20 it does go into that first week, it's very
21 likely to go into the second also, and I think
22 that's something that we would have to address
23 with the jurors.

24 THE COURT: Response from the --

25 MR. MOORE: I don't disagree.

1 THE COURT: -- defense.

2 MR. MOORE: We need to be, really, I
3 think it's going to take, at least, five, six
4 weeks, maybe more. And that is as close to an
5 estimate as I think we can give. We'll know
6 from them, because they'll tell us, they've got
7 something in December.

8 THE COURT: Well, what I can say is
9 that we expect it to take five weeks and just
10 say, possibly more.

11 MR. MOORE: Yeah, right. They'll tell
12 us if there's something out there.

13 THE COURT: And I usually give them the
14 dates because people will sit up there, and I
15 can see them calculating in their head what
16 that date is. So I try to give them the dates,
17 so that they understand that, where that puts
18 them to. And I'll tell you, even if you do a
19 trial for two days, I have to give them the
20 dates, because I can see them in their head
21 going what date is that. All right. What I'll
22 say with regard to that is, I'll say five weeks
23 and possibly more.

24 MR. MOORE: That sounds accurate.

25 THE COURT: With regard to openings

1 statements, can we discuss a time limit for
2 opening statements.

3 MR. McMASTER: No more than an hour.

4 THE COURT: I mean, I'm not one that
5 holds you to that. I don't have a timer here
6 going. But I think in this type of case, it
7 would be appropriate to have some discussion
8 with regard to that. I mean, I don't think it
9 would be appropriate for one side to have an
10 opening statement that was four hours and one
11 to have an opening statement that was an hour.
12 So can we get some understanding as to a length
13 for opening statements. And later on, I'm
14 going to talk about closing statements, but I
15 won't do that until later. Mr. McMaster
16 suggested an hour, response from the defense.

17 MR. PIROLO: That's fine, Judge.

18 THE COURT: Okay. Okay. I anticipate
19 there's going to be lots of exhibits. Since I
20 won't be here the first two days of March, the
21 first three days, or the first three days of
22 March might be a good time to get those to the
23 clerk, and have them marked. Give them some
24 time to have them marked. I'd like the clerk
25 to give me a typed list for the first day of

1 trial, give the defense a typed list, give the
2 State a typed list. If the -- and then we can
3 take it from there. At some point, you know,
4 I'm going to ask the defense to do the same.
5 But I would expect the State to be ready with
6 their exhibits and give them to the clerk, so
7 we can get marking them, and get a typed list.
8 Any questions or concerns about that?

9 MR. MOORE: No.

10 THE COURT: Okay. Is either side
11 requesting that I invoke the Rule of
12 Sequestration?

13 MR. MOORE: Yes.

14 THE COURT: Okay. The Rule of
15 Sequestration has been invoked then. Then I
16 would expect each party to advise -- that it is
17 their responsibility to advise their witnesses
18 that the rule has been invoked.

19 Now, I have inquiry as to -- Ms.
20 Kerchner is not at the Brevard County Jail.
21 That's my understanding. I have inquiry as to
22 when to bring her. I just want to advise the
23 State that they're going to need a little
24 notice of that. So you're going to have to let
25 me know, or let them know so that they can

1 bring her.

2 MR. McMASTER: Yes.

3 THE COURT: If you say bring her
4 tomorrow, that might not happen. So they want
5 some idea about when to bring her. With all
6 due respect, I don't think that's my job to get
7 involved in that, but the inquiry was made
8 directly to me. She is considered to be in the
9 custody of the State at this time, so maybe
10 that was appropriate. But I just want to make
11 the State advised to that, that there's going
12 to have to be a little notice to that.

13 MR. McMASTER: No problem, Judge.

14 THE COURT: Okay. And if I could have
15 a bench conference, please.

16 (Bench conference)

17 THE COURT: I don't know the validity
18 of this, but it's my understanding, based from
19 what has come before the Court, that there is a
20 dash-cam video that's is quite graphic. Is
21 that the understanding? I don't know if it was
22 shown during the pretrial, the pretrial
23 hearing, I think, maybe the one that Judge
24 Crawford did.

25 MR. BROWN: No. It was not shown.

1 THE COURT: Okay. I would like an
2 opportunity to review that myself prior to it
3 coming before the jurors. Only because I
4 haven't seen it, I don't want me to, with all
5 due respect, I've never seen anything like
6 that, so I want to view it ahead of time, so I
7 do not have a reaction in front of the jurors.
8 Is there any objection to that?

9 MR. MOORE: No. No, and we might
10 consider some kind of a warning instruction to
11 the jury.

12 THE COURT: I mean, I don't know what
13 it shows. I've just heard everyone refer to it
14 as graphic.

15 MR. MOORE: Yeah, it is. That's an
16 understatement. It's hard to watch it, but so
17 we, for them it's going to be pretty rough
18 especially.

19 THE COURT: Well, that's why I want to
20 review it ahead of time because I don't want me
21 to react in front of them if I've never seen
22 it.

23 MR. MOORE: Right.

24 THE COURT: I mean, I probably won't
25 look at it if it's too graphic, but I want to,

1 at least, have looked at it.

2 MR. MOORE: The Court is going to have
3 to look at it. We need to come -- I think we
4 need to read them some sort of instruction at
5 some point.

6 THE COURT: So if we can work, maybe,
7 you know, anticipate that that's coming, we'll
8 work on an instruction. And then, prior to
9 that coming -- maybe when you do your exhibits,
10 get them up here that week of March, you could
11 let me know what exhibit it is, what it's been
12 marked as, at some point in time I'll take the
13 opportunity to look at it. I just don't want
14 to look at it the first time in the presence of
15 the jury.

16 MR. McMASTER: Do you want an extra
17 copy to be submitted to the Court tomorrow
18 along with the exhibit list?

19 THE COURT: I mean, it's up to you all.
20 I don't, I mean --

21 MR. McMASTER: I can have a copy made.

22 THE COURT: I just want an opportunity
23 to view it ahead of time.

24 MR. MOORE: I trust Mr. McMaster, maybe
25 not Mr. Brown so much.

1 THE COURT: Okay. So if you'll do that
2 tomorrow, then I'll look at it at some point.
3 And then I'll, actually, give it back to you.

4 MR. McMASTER: That's fine.

5 THE COURT: Okay. It might take me a
6 couple days, but I'll look at it within a week
7 and give it back to you.

8 MR. BROWN: Judge, along those lines,
9 Mr. McMaster and I talked about this, it's our
10 intention when we publish it to the jury, we're
11 going to play it on a TV, and have the TV close
12 to the jury box as opposed to playing it on the
13 drop down screen.

14 THE COURT: Okay.

15 MR. BROWN: Just to minimize people in
16 the courtroom seeing it and reactions. I just
17 want to let the defense and the Court know
18 whether they want to have Mr. Bradley move to a
19 position where he can view it. And that may
20 affect courtroom security. Because if we play
21 it on the big screen, I'm concerned, as the
22 Court may be as well, about the reaction from
23 the gallery. So we thought the best way was to
24 play it on a smaller screen minimizing the
25 gallery's ability to view that.

1 THE COURT: Okay. I think that's
2 that --

3 MR. BROWN: The defendant moved over.

4 MR. MOORE: That's always an issue,
5 does the defendant want to watch it. And we
6 always find out, and sometimes they do,
7 sometimes they don't. But I can't say at this
8 point.

9 THE COURT: Okay. Well, we'll address
10 that when it comes. If we need to move him
11 prior to the jury coming into the room, do
12 something, or make special accommodations,
13 we'll do that.

14 MR. MOORE: And maybe some admonition
15 to the gallery, too. I don't know who is going
16 to be here, but --

17 THE COURT: I mean, I would expect that
18 can be part of the instructions, too.

19 MR. MOORE: Yeah, we've got time to
20 work on that.

21 THE COURT: I mean, once I see it, then
22 I might have some idea about what we're dealing
23 with. That's why I wanted to see it ahead of
24 time, just so I knew what we were dealing with.

25 MR. McMASTER: Judge, on the witness

1 list, when I pulled it up in our computer
2 system, it's supposed to be merging all of the
3 witnesses that have been provided over the
4 time, it comes up some addresses, police
5 department names and stuff, you just want the
6 name itself?

7 THE COURT: Yes.

8 MR. McMASTER: Not a reference to
9 police department?

10 THE COURT: Sometimes it's helpful for
11 them to know deputy so and so with Brevard
12 County Sheriff's Office.

13 MR. MOORE: Yeah, no, I agree with that
14 because that may trigger, a name may not, but a
15 title may.

16 MR. McMASTER: We'll leave that in.

17 THE COURT: Okay. Thank you.

18 (In open court)

19 THE COURT: Okay. That is all the
20 preliminary matters that I had on my list to
21 discuss for purposes of the pretrial
22 conference. Does the State have anything that
23 they would like to discuss?

24 MR. McMASTER: Not at this time, Judge.

25 THE COURT: Does the --

1 MR. McMASTER: Mr. Brown does have
2 something, Judge.

3 THE COURT: Oh, okay. Don't forget
4 that your mic is on and it's very sensitive.

5 MR. PIROLO: That's one of the issues I
6 want to address with the Court.

7 THE COURT: Okay.

8 MR. BROWN: Judge, we have one
9 additional case I want to present to the Court,
10 it's on motion in limine number three,
11 paragraph two. I think we argued, and I just
12 want to present it to the Court, Pagan v State,
13 830 So.2d 792.

14 THE COURT: Okay. You say this is
15 reference to motion in limine number three.

16 MR. McMASTER: Number three, paragraph
17 two.

18 THE COURT: Okay. Give me just a
19 moment. Okay. Anything else by the State?

20 MR. McMASTER: Judge, just wanted to --
21 we spoke to defense counsel earlier, our two
22 experts are still evaluating materials that
23 have been provided by the defense. They have
24 not yet reached any conclusion, so I have not
25 yet listed them, officially, as witnesses,

1 because we don't know whether, yet, we're going
2 to be calling them. But I just wanted to
3 advise the Court we're trying to do that as
4 soon as possible. If they are able to reach
5 their conclusion shortly, we might be able to
6 arrange deposition time for them during that
7 three day period that the Court is going to be
8 unavailable.

9 THE COURT: Okay. Okay, anything else
10 by the State?

11 MR. McMASTER: Not at this time, Judge.

12 THE COURT: Okay. Issues on behalf of
13 the defense.

14 MR. PIROLO: Yes, Judge. First the
15 microphone. Is there any possible way the
16 Court can turn it off, you know, nine to five,
17 whatever time we're in the courtroom?

18 THE COURT: The only problem with that
19 is that if you're arguing motions, then you
20 won't -- you'll have to come up here.

21 MR. MOORE: We will step up.

22 MR. PIROLO: That's fine. I've never
23 been told that no one couldn't hear me, so.
24 The concern is, there's four of us here, during
25 jury selection there will be a fifth person

1 just for the week of jury selection. It's very
2 difficult to reach over, if it's my witness,
3 you know, the button is in front of me, I'm not
4 too preoccupied with the button. If Mr.
5 Lanning needs to talk to me, it's very
6 difficult for him to reach over. It just would
7 make things a whole lot easier for us if it
8 could be turned off while we're in the
9 courtroom instead of just waiting until, you
10 know, testimony beginning. In the past, in
11 other courtrooms, I have just been allowed to
12 unplug it. They told me that it turns it off
13 that way. I don't know.

14 THE COURT: I don't know.

15 MR. PIROLO: Assuming it's the same
16 system, if it was unplugged, I don't think it
17 would be on.

18 THE COURT: Conceptually, I don't have
19 an issue with that. Does the State have a
20 issue with that? Because your microphones will
21 be turned off, too. Or do you want yours
22 turned off?

23 MR. McMASTER: I would think that we
24 would prefer to keep ours on, so when we make
25 objections it will be captured.

1 THE COURT: We'll turn off the
2 defense's from nine to five, and we'll leave
3 the State's on, and we'll see if that's an
4 issue. You know, they'll be listening, and so
5 if they can't hear you during certain types of
6 proceedings, I'm sure they'll let me know, and
7 then we can readdress it. But I'll either --
8 I'll talk to them about how to have that done,
9 and I'll go let you know.

10 MR. PIROLO: Judge, the other issue, I
11 think I already know the answer to it, the
12 rotating camera that's in front of the clerk
13 right now, I'm assuming that's for this trial
14 or is that something else?

15 THE COURT: That is for this trial.
16 The reason why it's placed where it is, is that
17 we came to an agreement through their media
18 committee, that they would pool their cameras
19 and I would give them two cameras. So there's
20 going to be one in the back, only one, you see
21 more today. There's going to be one in the
22 back, and there's going to be one here. And
23 the reason why it's in that box is so they
24 cannot film the jurors.

25 MR. PIROLO: My only concern would be

1 any capability it has to record audio,
2 obviously, well, that's my only concern.

3 THE COURT: It's not -- it cannot
4 record audio. In fact, the feed that they will
5 have is the same feed that the digital clerks
6 have. So that when it's bench conference,
7 theirs will be turned off. When it's off the
8 record, theirs will be turned off. I mean,
9 they have, actually, an actual feed from
10 digital recording that will turn those off.

11 MR. PIROLO: All right. Judge, the
12 other issue, kind of, came up today when Mr.
13 Bradley was brought in. We've been notified
14 that Mr. Bradley is not going back to Seminole.

15 THE COURT: Okay.

16 MR. PIROLO: He's staying here.

17 THE COURT: Okay.

18 MR. PIROLO: Mr. Bradley was not made
19 aware of that when he was transported. He's
20 got some documents in his cell that he needs
21 for the trial to help us, to assist us during
22 the trial. Is there any way that, either, he
23 could go back tonight, get his documents for
24 the trial, and be brought back tomorrow? Or
25 can someone else go, maybe we can get somebody

1 from our office to pick them up, and then bring
2 them to the Brevard County jail.

3 THE COURT: Okay.

4 MR. PIROLO: Whichever way would make
5 it easier. We can send an investigator up to
6 Seminole, pick up the items that he needs and
7 bring them back.

8 THE COURT: I would have to discuss
9 that with the representative from Brevard
10 County Sheriff's Office.

11 MR. PIROLO: He wasn't told. When they
12 brought him here today, he wasn't told, you
13 know, pack your stuff, you're not coming back
14 for a while.

15 THE DEPUTY: What we were told is he's
16 going to stay here for the duration of the
17 trial. So have the trial and then he'll go
18 back over there. The records that led to where
19 to pick him up, and told them that he was
20 staying here once he came over. So they should
21 have notified him over there.

22 MR. PIROLO: That wasn't done.

23 THE DEPUTY: I don't know what happened
24 there. Because they brought out a bag of
25 property with him. So we assumed he had all

1 his property until he walked out the door and
2 said he didn't. So I don't know why they
3 didn't tell him to back it all up, his clothes.

4 THE COURT: You're saying that there
5 are some documents that you need?

6 MR. PIROLO: Right. And, again, we
7 could arrange with our office, we could send an
8 investigator to Seminole, and they could put it
9 in a box or some kind of envelope, and they
10 could bring it over.

11 MR. MOORE: Lately, I have had zero
12 rapport with the staff at the Seminole County
13 jail, so if the Court can enter an order.

14 THE COURT: I can't enter an order
15 without them being present and being
16 representative.

17 MR. MOORE: Well, I'm just making a
18 suggestion. Whatever it takes to get that
19 done, then whatever. I am suggesting, short of
20 sending him back over there, but an order that,
21 from talking with Mr. Bradley, his stuff is
22 under his bed, and pack it, put it in a box or
23 two, and then our staff from the public
24 defender's office could pick it up. It would
25 take a court order to do that. So I'm just

1 floating that idea in to the Court.

2 THE COURT: You know, I can, it might
3 be easier --

4 MR. MOORE: -- if I ask for it --

5 THE COURT: Well, I don't know why they
6 wouldn't. But I can't or -- my issue is, now
7 this comes up frequently, I'm asked to enter
8 orders that require somebody to do something
9 that is not a party to this action, and doesn't
10 have an opportunity to be heard.

11 MR. MOORE: We could get Major Manly on
12 the phone easy enough. I don't know if right
13 this second. He's the head one --

14 THE COURT: Well, I'm not -- if someone
15 did that to me, I'd not be happy, and I'm not
16 going to do that to him.

17 MR. MOORE: They're already unhappy,
18 Your Honor. I mean that's, I guess, maybe they
19 don't like me, and that's fine.

20 THE COURT: I mean, I try to respect
21 his position as well as I know he respects
22 mine, so. Is the easier way to send him back
23 and have him come back?

24 THE DEPUTY: We were told when we left
25 there, the officer told us that they had packed

1 his stuff up for him and put it in property.
2 So it would be in property over there.

3 MR. MOORE: Well, we need a court order
4 to get it. They're not going to just take our
5 word for it if we show up and just hand it to
6 us. I learned that from experience.

7 THE COURT: They said it's all packed
8 up in property?

9 THE DEPUTY: They said they packed his
10 property up, whatever he had left, wherever he
11 was sleeping, or being housed, I guess he had
12 left stuff there, they tell him pack that up.
13 We assumed, because he came out with a bag,
14 that he had all his property, we didn't know
15 until we started walking out the door, and he
16 said he didn't have everything.

17 THE COURT: Okay. I don't have an
18 issue entering an order that his property that
19 is in the possession of Seminole County, is it
20 the sheriff's department?

21 THE DEPUTY: Correct.

22 THE COURT: Seminole County Sheriff's
23 Department be released to a representative of
24 the public defender's office.

25 MR. MOORE: Okay.

1 THE COURT: Do you want to prepare that
2 order? I mean, if you want to prepare that
3 order, I'll sign it. Okay.

4 MR. PIROLO: Judge, the other thing we
5 were going to ask for is an order for him to
6 shower and shave during the trial.

7 THE COURT: I have that same issue --
8 I -- with requiring them to do that. Normally,
9 what I do is, I make a request, that the Court
10 is requesting that the defendant be properly
11 showered and shaved each day for court. I will
12 do that. I have not had that be an issue in
13 the three years I've been doing this, just so
14 you know. I have not had that issue. If it is
15 an issue, we won't commence trial that day, and
16 that will not make me happy. And then I will
17 ask them why he wasn't showered and shaved.
18 But I will put that request. And I will put
19 that in writing.

20 MR. PIROLO: Do you want us to prepare
21 the order and send it to you?

22 THE COURT: You could do that, but it
23 has to be in -- by way of a request as opposed
24 to an order.

25 MR. PIROLO: Okay.

1 THE COURT: Because, once again,
2 they're not parties to this action. They're
3 not here.

4 MR. MOORE: I've had that order signed
5 a dozen times, and they've never objected to
6 it, never.

7 THE COURT: I still feel strongly that
8 they're not parties to the -- how am I going to
9 hold them in contempt if they don't do it?
10 That's the issue.

11 MR. LANNING: Judge, that would be the
12 next step that we might never get to.

13 THE COURT: I know, but you can't --
14 it's like, you know, you subpoena a witness and
15 they don't appear for a deposition, you have
16 to, at least, subpoena them and serve them. Do
17 you want me to enter an order, and serve
18 whoever is supposed the power to be at the
19 Brevard County jail? I mean, that would be the
20 only way to do that. I don't think they would
21 appreciate me serving them with an order. I've
22 made the request, we haven't had it an issue.

23 Deputy Kenworthy.

24 THE DEPUTY: Yes. We've had this issue
25 in the past with defendants that have requested

1 that, and then he just turned right around, and
2 said he will not do it at the jail. So after
3 he asked for it, he turned around and said he
4 wouldn't do it. We've had that issue.

5 THE COURT: So I'm making a request.
6 I've made it -- when I've been asked this
7 before, I've made it a request, and I haven't
8 had any issues, other than the defendant
9 himself didn't do it, but then I just didn't
10 address it further. But I haven't had that in
11 other cases. They've -- I've put it by way of
12 request, they've done it. We haven't had any
13 problems.

14 Okay. Anything else?

15 MR. MOORE: We just need some time to
16 get Mr. Bradley dressed.

17 THE COURT: Okay. I heard that you
18 needed time. They'll take him, I think they're
19 going to take him downstairs, you can meet with
20 him downstairs. And he'll be made available
21 for you to do what you need to do with regard
22 to clothing, appropriate clothing. I don't
23 think that's an issue at all. I didn't hear
24 that was an issue. In fact, I thought they
25 made accommodations with you already directly.

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Okay. That concludes the proceedings for this afternoon. Court will be in recess until 8:30 tomorrow morning. Thank you.

You know, I just wanted -- there's one thing I didn't get a chance to put -- is the State ready to proceed with regard to the trial?

MR. McMASTER: Yes, ma'am.

THE COURT: Is the defense ready to proceed with regard to the trial?

MR. MOORE: Let me ask him. Yes, we're ready.

THE COURT: Okay. I just wanted to put that on the record. Thank you.

* * * * *

C E R T I F I C A T E

STATE OF FLORIDA)
)
COUNTY OF BREVARD)

I, Anne Marie Hamill, Registered Professional Reporter (RPR) and Notary Public, transcribed to the best of my ability the audio recording of the foregoing proceedings held.

Dated this 19th of July, 2014.



ANNE MARIE HAMILL, RPR
Transcriber

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