



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

CASE NO. 2012-CF-35337-A

STATE OF FLORIDA,

Plaintiff,

vs.

BRANDON LEE BRADLEY,

Defendant.

**MOTION FOR ADDITIONAL PEREMPTORY CHALLENGES DUE TO  
NUMERICAL DISPARITY REGARDING PEREMPTORY CHALLENGES  
PROVIDED BY RULE 3.350(A), FLORIDA RULES OF CRIMINAL  
PROCEDURE AND SECTION 913.08, FLORIDA STATUTES, (1995); AND  
DUE TO SENSITIVE VOIR DIRE ISSUES IN THIS CASE**

The Defendant, BRANDON LEE BRADLEY, moves this Court to enter an Order pursuant to Fla.R.Crim.P. 3.350 (e), granting additional peremptory challenges. As grounds for this Motion, the Defendant states:

1. The Defendant has been indicted for first degree premeditated murder. The State has indicated its intent to seek the death penalty in the event that there is a conviction for Murder in the First Degree.
2. A capital case is unique in that a twelve (12) person jury is seated as opposed to six (6) persons in all other cases. Rule 3.270, Florida Rules of Criminal Procedure.
3. However, Rule 3.350(a), Florida Rules of Criminal Procedure, and Section 913.08(1)(a), Florida Statutes (1987), provide only ten (10) peremptory challenges.
4. Because a twelve (12) person jury must be selected, the procedural rules actually provide less potency in making peremptory challenges in capital cases than it does in other, less serious cases. For example:
  - a. Where the charge is punishable by life imprisonment, ten (10) peremptories are allowed, although only a six (6) person jury is seated. One and two-thirds (1-2/3's) challenges per jury seat is afforded.

b. In less serious cases, six (6) peremptory challenges are allowed to aid in selecting a six person jury, a one-to-one ratio.

c. In capital case, only ten (10) challenges are allowed in the selection of a twelve person jury, a ratio of less than one challenge to each seat.

5. Authorizing less potency in peremptory challenges than the Rules of Criminal Procedure and Florida Statutes effectively allow in other cases deprives the Defendant of his right to equal protection under the laws afforded by him the Fourteenth Amendment to the United States Constitution and by Article I, Section 2, of the Constitution of the State of Florida and his right against cruel and unusual punishment as guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Section 17, of the Florida Constitution.

6. Florida Statute Section 913.08(1)(a) (1995) makes it more difficult for an accused charged with a capital crime to obtain an acceptable jury than for defendants charged with non-capital crimes. There is no compelling interest, nor is there any rational basis, for a limitation on the number of peremptory challenges in capital cases that makes it more difficult to obtain a fair and impartial jury in capital cases than in other criminal cases.

7. Florida Statute Section 913.08(1)(a) (1995) is unconstitutional based on the following provisions in the Florida Constitution:

a. Florida Constitution, Article I, Section 1, which provides:

“...the enunciation herein of certain rights shall not be construed to deny or impair others retained by the people.”

b. Florida Constitution, Article I, Section 2, which provides:

“all natural persons are equal before the law and have inalienable rights, among which are right to enjoy and defend life and liberty...”

c. Florida Constitution, Article I, Section 9, which provides:

“no person shall be deprived of life, liberty or property without due process of law...”

d. Florida Constitution, Article I, Section 16, which provides:

“...and to have a speedy and public trial by impartial jury in the County where the crime was committed.” (emphasis supplied)

e. Florida Constitution, Article I, Section 22, which provides:

“the right of trial by jury shall be secure to all and remain inviolate. The qualifications and the

number of jurors, not fewer than six, shall be fixed by laws.”


8. Florida Statute Section 913.08(1) (a) (1995) is unconstitutional in violation of the following provisions of the United States Constitution:

- a. United State Constitution, Article VI which provides:  
“in all criminal prosecutions, the Accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed...and to have the assistance of counsel for his defense.” (emphasis supplied)
- b. United States Constitution, Article XIV, which provides:  
“...no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of law, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

WHEREFORE, the Defendant moves this Court to grant him additional peremptory challenges as needed in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-service to the Office of the State Attorney, Brevard County, Florida, this 8<sup>th</sup> day of November 2013.

  
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