

SCOTT ELLIS

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

CASE NO.: 05-2012-CF-035337-AXXX-XX

STATE OF FLORIDA,

Plaintiff,

v.

BRANDON LEE BRADLEY a/k/a
BRANDON LEE BRANTILEY,

Defendant.

ORDER RE: MOTIONS HEARD ON JANUARY 16, 2014

THIS CAUSE came before the Court on Monday, January 16, 2014, for a hearing on several motions filed by the parties. It is

ORDERED:

1. As to the Defendant's "Motion to Declare § 921.141(7), Fla. Stat., Unconstitutional and for Pretrial Determination of Admissibility of all 'Victim Impact' Evidence under §§ 90.104(2), 90.105, 90.403, Fla. Stat.," filed on November 8, 2013, this motion is **DENIED IN PART**, as to as to the defense's constitutional challenge to the statute. See Maxwell v. State, 657 So. 2d 1157 (Fla. 1995). The Court reserves ruling as to the defense's as-applied challenge. The State agreed to provide victim impact evidence in writing, giving the defense an opportunity to review and object, obtain a court ruling, and if necessary, to edit and redact any material before it is presented to the jury.



2. Defendant's "Demand for Disclosure of Favorable Evidence," filed on November 8, 2013, is **GRANTED**. The State is to provide a transcript of Kerchner's proffer by January 23, 2014.

3. Defendant's "Motion to Declare § 921.141(2) & (3), Florida Statutes, Unconstitutional (Mitigation Must 'Outweigh' Aggravation)" filed on November 8, 2013, is **DENIED**. Foster v. State, 38 Fla. L. Weekly S756 (Fla. Oct. 17, 2013); Ault v. State, 53 So. 3d 175 (Fla. 2010).

4. Defendant's "Motion for Notice of Aggravating Factors," filed on November 8, 2013, is **GRANTED**. The State orally pronounced the aggravators it was relying on at the January 16, 2014 hearing; however, the State is to also provide these aggravators in writing to the defense ten days from rendition of this Order.

5. "Defendant's Request the Trial Court to State Basis of Its Rulings," filed on November 8, 2013, is **DENIED**.

6. "Defendant's Motion to Preclude Capital Punishment as a Possible Sentence," filed herein on November 8, 2013, is **DENIED**. See Parker v. State, 904 So. 2d 370, 382 (Fla. 2005); Blackwelder v. State, 851 So. 2d 650, 65 (Fla. 2003); Banks v. State, 842 So. 2d 788 (Fla. 2003); Hoskins v. State, 965 So. 2d 1 (Fla. 2007); Martin v. State, 107 So. 3d 281 (Fla. 2012).

7. Defendant's "Motion to Declare § 921.141(1), Florida Statutes Unconstitutional and in the Alternative to Bar the State's Use of Hearsay Evidence at Penalty Phase" is **DENIED IN PART**, as to as to the defense's constitutional challenge to the statute. See Hoskins v. State, 965 So. 2d 1 (Fla.

2007); Martin v. State, 107 So. 3d 281 (Fla. 2012); Foster v. State, 38 Fla. L. Weekly S756 (Fla. 2013); Lowe v. State, 2 So. 3d 21 (Fla. 2008); Chandler v. State, 534 So. 2d 701 (Fla. 1998); Breedlove v. Moore, 74 F. Supp. 2d 1226 (S.D. Fla. 1999). The Court reserves ruling as to use of hearsay evidence in application, until a specific objection on hearsay is posed.

8. Defendant's "Motion to Declare Section 921.141(5)(i), Florida Statute, Unconstitutional as Written and as Applied," filed herein on November 8, 2013, is **DENIED IN PART**, as to as to the defense's constitutional challenge to the statute. See Gore v. Dugger, 763 Fla. Supp. 1110 (M.D. Fla. 1989). The Court reserves ruling as to the defense's as-applied challenge.

9. Defendant's "Objection to Death Qualification of Jury, Motion to Bar Imposition of Death Sentence and Memorandum of Law Re: Unconstitutionality of Florida's Capital Sentencing Procedure," filed herein on November 8, 2013, is **DENIED**. See Bottoson v. Moore, 833 So. 2d 693 (Fla. 2002).

10. Defendant's "Motion to Declare Section 921.141(5)(e), Florida Statutes Unconstitutional as Written and as Applied," is **DENIED** as to the defense's constitutional challenge to the statute. See Stephens v. State, 787 So. 2d 747 (Fla. 2001).

11. Defendant's "Motion to Declare Section 921.141(5)(b), Florida Statutes Unconstitutional as Written and as Applied," is **DENIED** as to the defense's constitutional challenge to the statute. See Francis v. State, 808 So. 2d 110 (Fla. 2001).

12. Defendant's "Motion to Declare Section 921.141(5)(d), Florida Statutes, Unconstitutional as Written and Applied," filed herein on November 8, 2013, is **DENIED** as to the defense's constitutional challenge to the statute. See Blanco v. State, 706 So. 2d 7, 11 (Fla. 1997); Stephens v. State, 787 So. 2d 747, 762 (Fla. 2001).

13. Defendant's "Motion for Findings of Fact by the Jury," filed herein on November 8, 2013, is **DENIED**. See State v. Steele, 921 So. 2d 538 (Fla. 2006).

14. Defendant's "Motion to Preclude Improper Argument and Tactics," filed herein on November 8, 2013, is **GRANTED**.

15. Defendant's "Motion to Compel the State to Furnish Penalty Phase Witness List," filed herein on November 8, 2013, is **GRANTED**. The State has ten days from rendition of this Order to supply that information.

16. Defendant's "Motion to Declare Florida's Death Penalty and Section 921.141, Fla. Stat., Unconstitutional (Faulty Appellate Review)," filed herein on November 8, 2013, is **DENIED**. See Foster v. State, 38 Fla. L. Weekly S756 (Fla. 2013); State v. Dixon, 283 So. 2d 1 (Fla. 1973).

17. As to "Defendant's Motion for Jury Instruction Delineating All Mitigating Factors under Fla. Stat. 921.141(6)(h)," filed herein on November 8, 2013, the Court **reserves ruling**.

18. As to Defendant's "Motion in Limine Re: Procedures," filed herein on November 8, 2013, the Court **GRANTS IN PART** the motion as it pertains to refraining from the use of the terminology "statutory" or "non-statutory" mitigating

circumstances in front of the jurors. The Court **reserves ruling** as to the remainder of the motion regarding procedures.

19. Defendant's "Motion for Disclosure of Impeaching Information," filed herein on November 8, 2013, is **GRANTED IN PART** as to paragraphs one and four in the motion, and the disclosure of Brady material.

20. Defendant's "Motion to Sequester Jury," filed herein on November 8, 2013, is **DENIED WITHOUT PREJUDICE**.

21. As to Defendant's "Motion for Change of Venue," filed herein on January 16, 2014, the Court reserves ruling as the defense failed to file legally required supporting affidavit(s).

22. State's "Motion to Compel Defense Experts to Preserve Files," filed herein on December 18, 2013, is **GRANTED**.

23. State's "Amended Motion to Require Defendant to Produce Expert's Files," filed herein on January 16, 2013, is **GRANTED**. The items for production are as follows:

- a. Any scans (MRI, PET, etc.), gray scale(s) for comparison, or tests relied upon by Dr. Joseph Wu in his report regarding the Defendant;
- b. Toxicology records of the Defendant from Wuesthoff Reference Laboratory (Litigation Package) dated April 13, 2012 and the Defendant's medical history from the Seminole County Jail, March 7-August 5, 2013, as mentioned in Susan M. Skolly-Danziger's report dated December 4, 2013;
- c. Defendant's academic records from Cobb County School District; academic records from Brevard Public Schools; medical records from Florida Department of Corrections; medical records from Wuesthoff Hospital; medical records from John E. Polk

Correctional Facility and tests, as referenced in Jacquelyn Olander's neuropsychological evaluation of the Defendant; and

d. Defendant's 10/15/2013 MRI data referenced in Dr. Mark Herbst's January 6, 2014 letter.


24. State's "Motion to Have Defendant Examined by State Experts," filed herein on December 18, 2013, is **GRANTED**.

DONE AND ORDERED at the Moore Justice Center, Viera, Brevard County, Florida, this 17th day of JAN., 2014.


MORGAN LAUR REINMAN
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I do certify that copies hereof have been furnished to **James D. McMaster, Assistant State Attorney, Office of the State Attorney**, 2725 Judge Fran Jamieson Way, Building D, Viera, Florida 32940, BrevFelony@sa18.state.fl.us and **Randy Moore, Esq.** and **Michael Mario Pirolo, Esq.**, Assistant Public Defenders, Attorneys for Defendant, 2725 Judge Fran Jamieson Way, Building E, Viera, Florida 32940, BREVARDFELONY@PD18.NET by e-mail and courier this 17th day of January, 2014.


Billie Lockaby
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