

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

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

STATE OF FLORIDA,

Plaintiff,

vs.

BRANDON BRADLEY,

Defendant.

**ORIGINAL**

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TRANSCRIPT OF DIGITALLY RECORDED  
MOTIONS HEARING

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BREVARD CO. FL.

2014 JUL 25 P 12:06

SCOTT ELLIS

The transcript of the Digitally Recorded  
Motions Hearing held in the above-styled cause  
at the Moore Justice Center, 2825 Judge Fran Jamieson  
Way, Viera, Florida, on the 16th day of January, 2014,  
commencing at 3:32 p.m., before the Honorable Morgan  
Reinman.

RYAN REPORTING  
REGISTERED PROFESSIONAL REPORTERS

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Document Page # 431



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A P P E A R A N C E S

JAMES McMASTER, ESQUIRE  
and

TOM BROWN, ESQUIRE  
Assistant State Attorneys  
2725 Judge Fran Jamieson Way  
Building D  
Viera, FL 32940

Appearing for the  
Plaintiff

RANDALL MOORE, ESQUIRE  
MICHAEL PIRROLO, ESQUIRE  
MARK LANNING, ESQUIRE  
Assistant Public Defenders  
2725 Judge Fran Jamieson Way  
Building E  
Viera, FL 32940

Appearing for the  
Defendant

Brandon Bradley, Defendant, present

## P R O C E E D I N G S

1  
2 THE COURT: Okay. I do have an Order from the  
3 State's Motion for Continuance that was heard from  
4 January the 13th, 2014. I call it a status conference.  
5 I have a couple of copies. I'm going to go ahead and  
6 deliver those at this time.

7 If we could give that to my staff attorney. Mr.  
8 Moore, this is for the Public Defender. I gave you many  
9 copies so everyone at your table could have a copy.

10 This is for the State.

11 And just for the record, the Order was hand-  
12 delivered to the State and the Defense in open court.

13 Okay. That goes through -- just basically says  
14 that the motion per the State's continuance was granted.  
15 It does confirm that the trial schedule -- that the case  
16 will -- the non-jury trial will commence on February  
17 24th.

18 I gave you an extra date there for non-death  
19 penalty motions on February the 20th at 3:00 p.m. Talks  
20 about the motions scheduled for today, talks about the  
21 motions scheduled for the 21st. And it also says the  
22 days in March that there will be no court.

23 With all due respect, I thought this trial was  
24 going in February. I have some dates that I'm going to  
25 be off in March. I could change those, but money has

1 been spent with regard to time off, and if it's not an  
2 inconvenience, I'd still like to take those days off.  
3 If something happens based on the trial and things that  
4 happen in the trial, I may change my mind with regard to  
5 that, but I'm hopeful that that won't -- I'll be able to  
6 take those days off because I do have some time off  
7 that's scheduled and money's been spent with regard to  
8 arrangements, thinking that the trial was going to be in  
9 the month in February and not March.

10 Okay. Having said that, Mr. Moore, I will let you  
11 go first with regard to your motions. And you just need  
12 to tell me which motion we're going to hear and let me  
13 get to it, and then we can proceed.

14 MR. MOORE: Sure. I would like for the State  
15 Attorneys to approach the Bench to discuss a logistical  
16 matter first, please.

17 THE COURT: Okay. I'll go bench conference.

18 (Whereupon, there was a Bench conference as  
19 follows:)

20 MR. MOORE: Yes, ma'am. I've discussed with the  
21 courtroom deputy the issue of security, and an agreement  
22 that we're proposing to the Court is related to the  
23 wearing of the stun belt.

24 THE COURT: Yes.

25 MR. MOORE: And as the Court can see, they've got  
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1 numerous deputies present in court, and the agreement  
2 was that if Mr. Bradley wears a stun belt, we don't  
3 object to that. Then they will have three uniform  
4 deputies, dressed as this gentleman is, in the  
5 courtroom, there will be two others in plain clothes out  
6 in the gallery, and then two other deputies in street  
7 clothes out in the gallery. And nobody will be seated  
8 conspicuously close to Mr. Bradley, so that the casual  
9 observer can look and see that they are security people.

10 THE COURT: Okay.

11 MR. MOORE: So, there will be three deputies in the  
12 green uniforms in the courtroom, and a total of four out  
13 in the audience; two of whom will be also dressed in  
14 green, and two will be dressed in plain clothes. And  
15 they will not be seated too close to Mr. Bradley.

16 So that in exchange, then, we won't object to him  
17 wearing the stun belt.

18 THE COURT: Okay. I think they call it the rack  
19 belt. Stun belt a/k/a rack belt.

20 MR. MOORE: Okay.

21 THE COURT: That has been discussed with me and I  
22 have no objections to that. I note in one of your  
23 motions has to do with uniform deputies coming to  
24 observe, so we'll address that separately.

25 MR. MOORE: That will be a different issue.

1 THE COURT: That will be a different issue. So,  
2 we'll address that, as well.

3 Okay. No, I have no objection to that. Okay.

4 MR. MOORE: Thank you.

5 THE COURT: Okay. Thank you.

6 (Whereupon, the Bench conference was concluded,  
7 after which the following proceedings were had:)

8 MR. MOORE: Your Honor, I filed a list of the  
9 motions that I propose to cover today, in the order that  
10 I propose to cover them.

11 THE COURT: Okay.

12 MR. MOORE: Unless the Court would rather take any  
13 of them out of order, I intend to stick with this order  
14 of presentation, and I will go straight through until  
15 I'm done, unless the Court has questions or...

16 THE COURT: Okay. We can go until 5:30 today.  
17 Whatever we don't get done at 5:30, we can take up on  
18 the 21st, and we'll take it from there.

19 Let me make sure. I didn't check this list to see  
20 if my Order was the -- I have the motions. Just let me  
21 make sure and see if my Orders are the same.

22 Okay. So far, it looks like we're the same, so  
23 that will make it easier for me, too, as well.

24 Okay. Then, Mr. McMaster?

25 MR. McMASTER: Judge, I apologize. The State has  
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1 also filed three motions and set them for a hearing for  
2 today.

3 THE COURT: Yes, sir.

4 MR. McMASTER: Those are relating to the production  
5 of various Defense experts and materials for our  
6 experts' review.

7 THE COURT: Yes.

8 MR. McMASTER: If possible, we would like to have  
9 those heard today, because the sooner we can get those  
10 materials, the sooner our experts will be able to review  
11 them and make a determination about whether they need to  
12 evaluate or interview the Defendant directly and what  
13 direction the State needs to be taking with respect to  
14 calling them as witnesses in this case.

15 MR. MOORE: I'm all for expediting here, and so I  
16 would think maybe we could get those out of the way  
17 first.

18 THE COURT: Okay. Then, we'll do the State's -- I  
19 think they have three motions. We'll do the State's  
20 three motions first.

21 Okay. Hold on a second, it will take me a minute  
22 to get to those.

23 Okay. Mr. McMaster, you may proceed.

24 MR. McMASTER: Thank you, Your Honor. The State's  
25 filed three different motions directed to the Defense

1 experts that have been produced. There are a total of  
2 four experts now. The original motion was directed to  
3 the first two that were disclosed in December, I  
4 believe, on December 17th, and I filed an amended motion  
5 today with respect to the production of the Defense  
6 experts' files, adding the additional two experts, which  
7 were added by the Defense on January 9th.

8 The first two experts were Dr. Jacquelyn Olander,  
9 and Susan Skolly-Danziger, I believe she's a doctor in  
10 pharmacology. I've added Joseph Wu, M.D., and Mark  
11 Herbst, H E R B S T, M.D., as they were supplemented on  
12 January 9th, to the Motion to Produce Files.

13 Taking the easiest motion first, the State is  
14 requesting that the experts Olander and Skolly-Danziger  
15 preserve the notes and file materials that they reviewed  
16 and based their conclusions on. I think it's a fairly  
17 non-controversial motion, and I would suggest that  
18 should be granted out of hand.

19 THE COURT: Okay. Response from the Defense?  
20 There's two motions, so let's address the Motion to  
21 Compel Defense's Experts to Preserve Files first.  
22 That's in reference to Olander and Danziger. And then  
23 address the second one, which is the amended motion with  
24 regard to the -- and addressed to Herbst and Wu.

25 MR. MOORE: First motion I don't object to. The  
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1 Court without objection can enter the Order directing  
2 the witnesses to preserve their files.

3 The second one, I would ask that the State provide  
4 a specific list of what they want to get from the  
5 experts' files because they're not entitled to  
6 everything in those files. For example, the notes that  
7 the reports are based on, any notes related to work  
8 product, which would be discussions between attorneys  
9 and experts. And then there are some intellectual  
10 property limitations which -- by the experts, by using  
11 tests and the scoring devices that come with the tests,  
12 they are limited by the producers, the authors of those  
13 tests, from disclosing those, unless it's to another  
14 expert.

15 So, there's some limitations as to what they are,  
16 our experts are required to provide and what they can  
17 provide.

18 So, if the State will give us a precise list, as we  
19 are required to do whenever we ask for the contents of  
20 let's say an FDLE, an expert's file, we have to provide  
21 a list of exactly what we want, and then if there's no  
22 objection, we are provided with those things.

23 So, that's my request that before the Court enters  
24 an Order about what our experts are required to produce,  
25 that the State provide with specificity a list of what

1 they want to get.

2 THE COURT: Okay. What I heard is the first motion,  
3 Motion to Compel Defense Experts to Preserve Files,  
4 that's dated December 18, 2013, that motion is granted.

5 MR. McMASTER: May I approach, Judge?

6 THE COURT: Yes, you may. I'm going to do a big  
7 Order --

8 MR. McMASTER: That's fine.

9 THE COURT: -- in the end, and we're going to  
10 prepare our own Order and have that for you. I'll hold  
11 on to that.

12 MR. McMASTER: I have these forms if you want them.  
13 If you don't want them, that's fine, also.

14 THE COURT: Actually, I'll hold onto that, and we'll  
15 see if we want to do that, or if we want to do a big  
16 Order at the end. But I'll hold onto that.

17 Okay. And then I have the second motion --

18 MR. McMASTER: It's the one to require the  
19 Defendants to produce the experts' files.

20 THE COURT: Okay. And then the Motion to Require  
21 Defendant to Produce Experts' Files. That one's dated  
22 January 16th, 2014. What I heard was no work-product  
23 privilege and no intellectual property information.

24 Mr. McMaster, he's asking for more specifics.

25 MR. McMASTER: Yes, ma'am. Taking the easy ones  
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1 first, I would start with Dr. Wu. From reading his  
2 report, it appears that the only thing that Dr. Wu did  
3 was to review a PET scan that was produced by another  
4 provider, dated December 23rd of 2013. If that --

5 MR. MOORE: And an MRI.

6 MR. McMASTER: Oh, he also read the MRI? Is that  
7 the same MRI that was done by Dr. Herbst?

8 MR. MOORE: Well, let me clarify, if that will help  
9 with this hearing.

10 MRI was done in Orlando. Dr. Wu did an MRI DTI  
11 with neuro-quantification. And that data was reviewed  
12 by Dr. Wu, and it was secondarily reviewed by Dr.  
13 Herbst.

14 MR. McMASTER: I'm not looking to produce the same  
15 documents twice or the same records twice. If the  
16 records that Dr. Wu have include the same record that  
17 was reviewed by Dr. Herbst, I'm just asking for copies  
18 of the scans that were done.

19 MR. MOORE: That's correct.

20 MR. McMASTER: That takes care of two of the  
21 experts.

22 THE COURT: Okay. You're asking for --

23 MR. MOORE: But the contents of their files they  
24 aren't getting, if that's what they're looking for.

25 MR. McMASTER: We would like the scans and any gray  
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1 scale that he's done to make comparisons with other  
2 scans.

3 THE COURT: Okay. The scans are the PET scans.

4 MR. McMASTER: Yes. PET scan and an MRI scan.

5 THE COURT: PET scan, MRI scan and any gray scans  
6 used to --

7 MR. McMASTER: Gray scales.

8 THE COURT: Gray --

9 MR. McMASTER: Scale.

10 THE COURT: -- scale used for comparisons? Okay.  
11 I'll have Mr. Moore respond at the end.

12 MR. McMASTER: With respect to Dr. Danziger, on Page  
13 1 of her report that has been produced, she indicates  
14 that the documents she reviewed were the toxicology  
15 records of Brandon Bradley from Wuesthoff Reference Lab,  
16 and there was a litigation package dated April 13th of  
17 2012. And Brandon Bradley's medical history from the  
18 Seminole County Jail from March 7th through August 5th  
19 of 2013.

20 THE COURT: On the toxicology records, can you give  
21 me where that's from again and the date?

22 MR. McMASTER: From Wuesthoff Reference Lab. And  
23 its title is a Litigation Package. And it's dated April  
24 13 of 2012. I can give you copies of these documents  
25 that I highlighted.

1 THE COURT: Okay.

2 MR. McMASTER: And with respect to Dr. Olander, on  
3 Page 1 of her report she lists the background  
4 information that she reviewed. One was academic records  
5 of Cobb County School District, Two was academic records  
6 from Brevard Public Schools, Three is medical records  
7 from the Florida Department of Corrections, Four is  
8 medical records from Wuesthoff Hospital.

9 If that is a repeat of the ones from Dr. Danziger,  
10 we wouldn't need them to repeat it, but just in case  
11 they're not, we would like them.

12 Number Six was medical records from John E. Polk  
13 Correctional Facility. And once again, if those are  
14 repeats of Brandon Bradley's medical history from  
15 Seminole County Jail listed with Dr. Danziger, we would  
16 not need them twice.

17 We are not requesting any of the records that we  
18 produced in discovery in this case, such as the police  
19 reports, the DVDs of the Defendant's statements or  
20 anything along that line.

21 On Page 6 of the report of Dr. Olander, she lists a  
22 number of different tests and instruments that were  
23 administered. We are asking for all of the testing  
24 materials. I understand what Mr. Moore is saying about  
25 the proprietary information. The State has no objection

1 if there is a concern about proprietary limitations on  
2 what they can produce. I believe I heard him say that  
3 it could be produced to another expert. So, we would  
4 not have an objection if those materials that are listed  
5 on Page 6, which include the Advanced Clinical Solutions  
6 Word Choice, Reliable Digit Span, LL2 Recognition, the  
7 Wechsler Adult Intelligence Scale, Fourth Edition, WAIS  
8 IV. The Delles (Phonetic) Cap of Executive Function  
9 System, which is the DCEFS, Trial Making Test, Verbal  
10 Fluency Test, Wechsler Memory Scale IV, which is WMS-IV,  
11 Logical Memory I, Logical Memory II, LM-II Recognition,  
12 Design 1, Design 2, DE2 Recognition. There is a  
13 Substance Abuse Subtle Screening Inventory 3, it's a  
14 SASSI-3, a Paulhus Deception Scales, PDS, Instruments  
15 for Assessing, Understanding and Appreciation of Miranda  
16 Rights and Standardized Assessment of Miranda Abilities.

17 We are asking for all those materials, including  
18 the tests that were administered, the results and the  
19 scoring materials. And once again, if there are  
20 proprietary materials, they can be turned directly over  
21 to our expert rather than to our office.

22 May I approach, Judge?

23 THE COURT: Yes, you may. And this is a copy for  
24 me?

25 MR. McMASTER: Yes.

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1 THE COURT: Okay. Mr. Moore, response from the  
2 Defense.

3 MR. MOORE: Your Honor, I will have to see once I  
4 get a copy of the Orders and provide them, which I will  
5 do immediately, to my experts, what their responses are  
6 as far as their limitations, and if we have any -- they  
7 have any issues with that, then I will immediately let  
8 Mr. McMaster know and he'll take whatever perfect steps  
9 he needs to take.

10 I don't object, but I haven't seen the Court's  
11 final Order, and I haven't provided to my experts and  
12 gotten their feedback, so I'm kind of shooting in the  
13 dark at this point. But that will be my response.

14 THE COURT: Okay. So, I'll grant the motion. When  
15 do you want this information, Mr. Moore? How much time  
16 do you think you'll need? Obviously, I assume Mr.  
17 McMaster's going to say the sooner the better.

18 MR. McMASTER: Yesterday would have been great.

19 THE COURT: Right. I assumed he was going to say  
20 that.

21 MR. MOORE: I'm all about soon, too. I mean, we're  
22 not cutting any corners, but I would like to get things  
23 on the road.

24 As soon as I get a written Order, Your Honor, I  
25 will immediately --

1 THE COURT: You'll get the written Order.

2 MR. MOORE: -- get those to my experts, and then  
3 I'll know where I stand.

4 THE COURT: Okay,

5 MR. McMASTER: May I approach?

6 THE COURT: Yes, you may.

7 MR. McMASTER: Give Your Honor the forms I've  
8 ordered.

9 THE COURT: Okay. I want to make it more specific  
10 than this, because I think they're going to need that.

11 Let's work on the premise that you're going to have  
12 a written Order by Tuesday, because Monday's a holiday.  
13 Tuesday's the 21st. Can we do it? I'm thinking a week  
14 to ten days.

15 MR. MOORE: Do what, Judge?

16 THE COURT: To produce the information.

17 MR. MOORE: I think that's realistic. Sooner, if we  
18 can.

19 THE COURT: Want me to say a week? That gives them  
20 a month to work with it before trial, a little less than  
21 a month.

22 MR. MOORE: Yeah, a week is fine. If I have  
23 problems, I need more time, I'll come to the Court.

24 THE COURT: Okay. So, we'll get you the Order by  
25 the 21st. And we'll ask that it be produced to the  
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1 State by the 28th.

2 Now, Mr. McMaster, I heard proprietary limitations  
3 with regard to some documents that they may be  
4 requesting that it be produced to your expert. Do they  
5 know who your expert is?

6 MR. McMASTER: Not yet, Judge, but I will advise Mr.  
7 Moore who our experts are.

8 THE COURT: Okay. If that is the position of the  
9 Defense once they get this Order, and there's an issue  
10 with regard to production to your expert or if you don't  
11 get to them your expert timely, then I'll have to  
12 readdress it.

13 I'm assuming, based on what I know of the attorneys  
14 involved, that you all will work together with regard to  
15 this, and obviously if it becomes an issue, bring it to  
16 my attention right away and we'll readdress it right  
17 away.

18 And I'm making some assumptions here because I'm  
19 familiar with Mr. McMaster and I'm familiar with Mr.  
20 Moore, so I'm assuming that that's going -- we'll be  
21 able to resolve that between the two of you. But  
22 obviously if it can't, I am available and ready to  
23 address it.

24 MR. McMASTER: Yes, ma'am.

25 THE COURT: Okay.

1 MR. McMASTER: Judge, with respect to the third  
2 motion, the motion to have the Defendant examined by  
3 State experts, that specifically refers to the State  
4 experts that would be relating to the testimony of Dr.  
5 Jacquelyn Olander and Dr. Susan Skolly-Danziger.

6 From reading the reports, it appears that those are  
7 the only two doctors that actually examined or met with  
8 Mr. Bradley to interview him.

9 We won't be able to make a final determination as  
10 to whether our experts actually need to interview him  
11 until we get them the underlying materials and they've  
12 had a chance to review them and we can discuss it with  
13 them. But assuming that they do wish to conduct an  
14 interview, the State believes it has the ability to do  
15 so. However, I could use some clarification from the  
16 Court and the Defense.

17 The Defendant in this case on January 8th, filed a  
18 Disclosure of Defense Mental Health Expert Witnesses,  
19 listing the four experts that we have been discussing  
20 here today. They have also listed in that motion, and I  
21 have a copy for the Court, it's at Documentary Number  
22 216 of the court file, but I know the Court doesn't  
23 always get the court files.

24 THE COURT: Okay. Thank you, sir.

25 MR. McMASTER: The Defense has filed a notice  
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1 pursuant to Rule 3.202(c), that the Defendant discloses  
2 the following statutory and non-statutory mental health  
3 mitigation that the Defendant expects to establish  
4 through each of the above-listed witnesses insofar as it  
5 is possible.

6 Rule 3.202 of the Florida Rules of Criminal  
7 Procedure is directed toward expert testimony of mental  
8 mitigation during the penalty phase of a capital trial.  
9 And it provides that the Defense must give notice and  
10 allows for an examination by State experts.

11 However, since the Rule that they have cited is  
12 directed only to the penalty phase of the proceeding,  
13 the Rule provides that the examination by the State is  
14 to be conducted within 48 hours after the Defendant is  
15 convicted of capital murder.

16 We have been advised by the Defense that they  
17 intend to call the two experts at issue, Doctors Olander  
18 and Danziger, in their case in chief in the guilt phase  
19 of this case, as well as in the penalty phase, if  
20 necessary.

21 It is the State's position that the appropriate  
22 Rule for filing the notice would have been Rule 3.216,  
23 which provides for timing for filing of a notice of  
24 intent to rely on a mental health defense other than  
25 insanity.

1 Under that Rule, the notice should be filed as soon  
2 as a good-faith determination has been made to utilize  
3 the defense, but in no event later than 30 days prior to  
4 trial. And under that Rule, subsection (f), it does  
5 allow for Court-ordered experts for other mental health  
6 defenses, and it allows for the State to have the  
7 opportunity to evaluate the Defendant for that purpose.

8 There has been no notice filed by the Defense under  
9 Rule 3.216. It's the State's position that the oral  
10 notice that they intend to present this mental health  
11 testimony in the guilt phase of this proceeding allows  
12 the State to conduct their examination -- or an  
13 examination of the Defendant by our own experts, and we  
14 are requesting that.

15 THE COURT: Okay. Clarification and response from  
16 the Defense.

17 MR MOORE: Your Honor, I've complied with this, I  
18 believe, with the only Rules that I need to comply with,  
19 which would be the identification of my mental health  
20 mitigation experts and the proposed mitigation under  
21 3.202. So, we complied with that in a timely fashion.

22 And as to the guilt phase of the trial, we have  
23 responded under 3.220, which -- and provided the CVs and  
24 the reports of these witnesses, which makes it evident,  
25 makes it very obvious that these witnesses are expert

1 witnesses. And I would agree that if they testify at  
2 the guilt phase, that they are subject to being deposed  
3 by the State.

4 And so, whether it's filed under 3.216 or 3.220,  
5 our intention is obvious, without revealing our tactical  
6 intent, but in terms of compliance with the Rules, we've  
7 done that. And I believe that the State would be then  
8 in a position to justifiably take the depositions of Dr.  
9 Olander and Dr. Skolly.

10 MR. McMASTER: I'm not asking to take depositions.  
11 I believe I have the right to do that the way that they  
12 have provided them in discovery. The question is  
13 whether my experts have the right to interview Mr.  
14 Bradley, to conduct their own forensic interview of him  
15 just as their experts did in preparation for their trial  
16 testimony.

17 It's the State's position that under the Rule 3.216  
18 that if the Defense intends to present mental health  
19 testimony in the guilt phase of this proceeding from  
20 Doctors Olander and Danziger, that that is in the form  
21 of a defense, whether it's to attempt to convince the  
22 jury to disregard the Defendant's confession or  
23 whatever.

24 The State's in an interesting position here, Judge.  
25 We have been advised of the substance of the two

1 experts' testimony. Each of the experts has -- Doctors  
2 Olander and Danziger for different reasons -- have  
3 rendered an opinion that Mr. Bradley was incapable of  
4 voluntarily waiving his Miranda rights.

5 Despite that, we have been notified by the Defense  
6 that they do not intend to file a Motion to Suppress Mr.  
7 Bradley's confession. We have some concerns about that,  
8 obviously.

9 MR. MOORE: I might be able to cut to the chase  
10 here. I don't mean to cut Mr. McMaster off --

11 MR. McMASTER: That's quite all right.

12 MR. MOORE: -- but I agree that because we've  
13 disclosed Dr. Olander and Dr. Skolly pretrial, that they  
14 not only can be deposed, but because their testimony  
15 would involve their evaluations of Mr. Bradley, that the  
16 State is entitled to have their experts evaluate Mr.  
17 Bradley, pretrial. I agree.

18 THE COURT: Okay. So, this talks about disclosure,  
19 this motion. Oh, actually, this talks about the  
20 examination. So, the examination of Mr. Bradley by  
21 State's expert, that motion is granted.

22 MR. McMASTER: May I approach?

23 THE COURT: Yes, you may.

24 MR. McMASTER: For whatever it's worth.

25 THE COURT: Okay. Thank you. I may use these, I  
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1 may not. I'll make that decision after court.

2 MR. McMASTER: And on that same theme, can we  
3 approach briefly, Judge?

4 THE COURT: Yes, you may.

5 (Whereupon, there was a Bench conference as  
6 follows:)

7 MR. McMASTER: With respect to the Defense strategy  
8 not to file a Motion to Suppress given the findings by  
9 their two Defense experts, the State would ask at some  
10 point that the Court make an inquiry of the Defendant  
11 that he's aware of the substance of the experts'  
12 reports, and that he is aware that the Defense has  
13 decided not to file a Motion to Suppress and that he's  
14 in agreement with that strategy.

15 MR. MOORE: In response to that, I would object to  
16 any inquiry. I will represent as an officer of the  
17 Court, that of course we have discussed this at length  
18 with Mr. Bradley, I have.

19 He is well aware of the contents of the reports.  
20 He's aware of the fact that we're not filing a Motion to  
21 Suppress, and he is in agreement with is.

22 MR. McMASTER: I don't have any problem with Mr.  
23 Moore at all. If he's representing that that happened,  
24 that's fine. My concern is when this case is over, if  
25 there has been a guilty verdict, Mr. Bradley's going to

1 come back and say Mr. Moore never said anything to me  
2 about any of that stuff, and had I known, I would have  
3 had a totally different approach to how to go to trial  
4 on this case.

5 And it's a setup for a 3.850. And the State's  
6 requesting, whether the Court does it in-camera with the  
7 Defense and the Defendant alone, whether you do it in  
8 open court, wherever you do it, the State wants it part  
9 of the record, that the Defendant specifically is put on  
10 notice of the substance of the Defense reports, that  
11 he's aware of them and he's aware of the Defense  
12 strategy and he is in agreement with it.

13 THE COURT: I have a concern with that request. I  
14 have to assume, as an officer of the Court, that Mr.  
15 Moore's representations to the Court are accurate.

16 If there was a 3.850 filed with regard to that,  
17 I'm assuming that he would testify that he provided all  
18 that. And if Mr. Bradley testified that he did not get  
19 that, it would be an issue of credibility before the  
20 Court. And I have to assume that Mr. Moore's credible  
21 with regard to his representations.

22 MR. McMASTER: I don't know what some judge in  
23 the future is going to find about credibility. I don't  
24 know if Mr. Moore is going to be available to testify in  
25 the future. I do know that right here and right now as



1 the record stands, there is nothing to show that Mr.  
2 Bradley is aware of any of these materials and that he's  
3 in agreement.

4 Just as the plea agreement disputes that we get all  
5 of the time. The Defendant comes back later saying they  
6 never communicated the plea agreement.

7 That's all we're asking to do.

8 THE COURT: My concern with that request is if we do  
9 that, we would have to do that not only on that, but the  
10 trial Court would spend all its time confirming that  
11 every decision that the Defense attorneys made, was  
12 confirmed by their client. And I have an issue with  
13 that type of procedure.

14 MR. McMASTER: Judge, our concern obviously is the  
15 Defendant confessed to shooting Deputy Pill. This is a  
16 videotaped confession where their experts are giving a  
17 basis for not presenting it to the jury. And the  
18 Defense is representing they're going to attempt to  
19 convince the jury to disregard this (Inaudible -  
20 coughing in background). They're conceding that the  
21 statement's coming into evidence before the jury.

22 In my opinion and my experience, that's an unusual  
23 tactic. Not saying it's not a good one, I'm just saying  
24 it's an unusual one. And I think it's of such  
25 importance that at this stage it's critical for the

1 Court to inquire of the Defendant.

2 MR. MOORE: There is also a videotape of the  
3 shooting, as well. And it's not like that's all of the  
4 evidence in this case. And as the Court correctly  
5 pointed out, I mean, if we're going to piecemeal every  
6 decision we make as lawyers, then we will be trying this  
7 case until December in getting the Defendant to say,  
8 yeah, I know that and I agree with that or I don't agree  
9 with that. I mean, there's just got to be a point where  
10 the Defendant relies on his lawyers and the Court relies  
11 on the representation of counsel, which I'm at this  
12 point representing that I have done all the things that  
13 I said, and I will state that under oath.

14 And if at some point some future judge hears this  
15 when I'm passed out in a bar in Morocco, Court will have  
16 this record. And what I'm just saying under oath, I'm  
17 saying under oath, I did discuss it with Mr. Bradley and  
18 he is onboard with it.

19 MR. McMASTER: As an alternative to the Court making  
20 an inquiry, could we ask that the Court direct that Mr.  
21 Bradley sign a notarized statement indicating that he's  
22 been advised by Mr. Moore of these things and he can  
23 submit it to the Court under seal. As long as it's kept  
24 in the record under seal, I don't have any problem with  
25 it.

1 THE COURT: With all due respect, I have  
2 philosophical difference as to how that needs to be  
3 handled, and I have to rely on the credibility that Mr.  
4 Moore's -- of his representation before the Court.

5 So, I will note the State's concern, and this Court  
6 is relying on the credibility of Mr. Moore and his  
7 statements that Mr. Bradley is aware of the issue and  
8 that he agrees with his trial counsels' strategy with  
9 regard to not filing the Motion to Suppress.

10 Okay. Thank you.

11 (Whereupon, the Bench conference was concluded,  
12 after which the following proceedings were had:)

13 MR. McMASTER: That covers the State's motions,  
14 Judge. Thank you.

15 THE COURT: Thank you, sir.

16 Okay. Mr. Moore.

17 MR. MOORE: I'm going to assume, also, that the  
18 Court has a copy of each of these. I called the Court's  
19 J.A. this morning and said she's copied them and  
20 provided them to the Court.

21 THE COURT: I have received a copy of all 46 of your  
22 motions.

23 MR. MOORE: Well, then, starting with the motions in  
24 the order that they're listed, the first one is a Motion  
25 to Declare Section 921.141(7) Florida Statutes

1 Unconstitutional and For Pretrial Determination of  
2 Admissibility of all Victim Impact Evidence Under the  
3 Cited Statutes.

4 First of all, I would preface my argument with the  
5 fact that I am well aware of the holdings in the United  
6 States Supreme Court decision of Payne versus Tennessee,  
7 and the Florida Supreme Court decision of Windham versus  
8 Florida, which hold that victim impact evidence is  
9 admissible in the penalty phase proceeding of a capital  
10 homicide trial, but it's not without limitation.

11 Just as the Defendant cannot keep out all evidence  
12 of victim impact, the State cannot introduce all  
13 proposed victim impact evidence. There's a balancing.  
14 It's under 90.403.

15 The authority that the State has to introduce  
16 victim impact evidence, not just those cases, but  
17 Florida Statute 921.141(7), which gives the State the  
18 right to introduce that evidence and Article 1, Section  
19 16(b) of the Florida Constitution, which states what the  
20 rights of survivors are and next of kin. All of those  
21 rights, notwithstanding, according to the -- all of the  
22 cases, the two that I cited and all the cases that have  
23 followed, it's recognized that all of those are  
24 subordinate to the Defendant's right to a fair trial.  
25 So, there has to be a balancing of the Defendant's

1 rights versus the State's rights and the rights of the  
2 survivors.

3 And since I don't know exactly what the State  
4 proposes to introduce, then all I can do is argue for a  
5 proposed approach to the presentation of victim impact  
6 evidence. And that would be that the statements of  
7 survivors be in writing, that they be reviewed by the  
8 Court, and if necessary, redacted, and that they be  
9 presented in that fashion.

10 I mean, the case law does not support completely  
11 excluding it. However, if the Court were -- Florida  
12 Supreme Court or the U.S. Supreme Court were to revisit  
13 it, we would argue that the statute would allegedly be  
14 and arguably is unconstitutional because the jury's  
15 provided with very, understandably, emotional testimony,  
16 and not given any instructions as to what to do with it.

17 And although they are instructed that it's not an  
18 aggravating circumstance; in fact, it cannot help but be  
19 an aggravating circumstance, because of the emotional  
20 nature of it.

21 Even with the limitations that are put on it and  
22 that instruction to the jury, there is a danger of that  
23 becoming a non-statutory aggravating circumstance.

24 But that's already litigated; I understand that.  
25 It's already deemed to be admissible at the state and

1 the national level. So, I would ask that the Court  
2 perhaps would want to review what the State proposes to  
3 introduce by way of victim impact evidence before it  
4 makes a final decision on that.

5 So, other than the outline that I proposed, the  
6 proposed way of presenting victim impact evidence to the  
7 jury, I don't know what else to point to to object to.  
8 And so, perhaps this is premature, this motion is. But  
9 that is our position.

10 THE COURT: Okay. Hear response from the State.

11 MR. BROWN: Your Honor, State's position is we do  
12 intend on presenting victim impact evidence, but I will  
13 tell the Court that what my practice has been. I will  
14 have it in writing, I will give it to the Defense prior  
15 to the testimony for them to review. We can hash out  
16 any issues that we have with it. The Court can be the  
17 final, obviously the decision-maker, and then we can add  
18 it or black out or change however the Court rules, and  
19 then the witness or witnesses that I intend to present  
20 the victim impact evidence through will read that, and I  
21 think that's from the State's standpoint, the safest way  
22 to do that, and I think that addresses Defense concerns.

23 But obviously our position is, it is  
24 constitutional and we do intend to present it.

25 THE COURT: Okay. With regard to the motion, I'll  
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1 deny in part as to the unconstitutionality. And I'll  
2 reserve ruling as to the remaining issues to be  
3 addressed once the Defense receives the written  
4 statements. And then we can readdress it if need be.

5 MR. MOORE: Sure.

6 THE COURT: I assume we'll have to readdress it at  
7 some point.

8 MR. MOORE: Yeah, if we get to that point, that's  
9 true.

10 Whenever the Court's ready, I'll move on.

11 THE COURT: Okay. As to Motion Number Two.

12 MR. MOORE: Demand for Disclosure of Favorable  
13 Evidence. This lists a lot of things which --

14 THE COURT: Mr. McMaster's standing up. I think  
15 that means something.

16 MR. McMASTER: He wins. Judge, we're aware of our  
17 obligations under Brady and the relating cases as to  
18 disclosing favorable evidence to the Defense. We have  
19 in fact disclosed everything that has been provided to  
20 us in connection with this case, and we will continue to  
21 do so throughout the trial.

22 MR. MOORE: I'm aware of that. And I was going to  
23 say, I'm aware that they are aware of that, because I've  
24 worked with Mr. Brown and with Mr. McMaster before.

25 The one point that has come up since this motion  
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1 was filed, and that is the co-defendant, Andrea  
2 Kerchner, has become a State witness, and in exchange  
3 for her testimony is going to be receiving a deal for a  
4 specific sentence. And gave a, as the Court may --  
5 well, the Court does know, of course -- a proffer of her  
6 testimony yesterday. And we will be provided on the  
7 Defense side with a transcript of -- and I presume a  
8 recording -- of that proffer. But there may have been  
9 things said before, as often happens, a proffer is taken  
10 or any statement is taken, there's a run through, and  
11 then the tape recorder moves on. And it would be in  
12 those areas before and after the recorded portion which  
13 we're going to get, where things may have been said,  
14 which could be favorable to the Defense, could be Brady  
15 material.

16 And I'm aware that these two prosecutors are aware  
17 of their obligations, but I wanted to specifically bring  
18 that up so that the State can be mindful that there may  
19 be some matters contained in that proffer, in addition  
20 to the other things that I've listed in here, which Mr.  
21 Brown and Mr. McMaster are well aware of.

22 So, I just want to make sure that that proffer is -  
23 - and everything that was said, not just what was  
24 recorded -- is encompassed in my request.

25 THE COURT: Okay. I'm aware that a proffer took  
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1 place. Obviously I wasn't privy to that.

2 Mr. McMaster, your response.

3 MR. McMASTER: Judge, the proffer was done. We had  
4 a court reporter present to record the entire  
5 proceeding. The court reporter began the proceeding by  
6 swearing in Ms. Kerchner. Everything that she said was  
7 recorded from the time she began speaking until the time  
8 the proffer was ended and she left the room.

9 THE COURT: You're saying there was no conversations  
10 before the court reporter commenced and there was no  
11 conversations after the court reporter left.

12 MR. McMASTER: Between the State and Ms. Kerchner,  
13 that's correct. She may have had some conversations  
14 with her attorneys, I don't know. I was not privy to  
15 those.

16 THE COURT: Okay.

17 MR. McMASTER: And with respect to the agreements  
18 and the transcript, Mr. Moore is correct. As soon as  
19 the transcript is prepared, it will be supplied to him.  
20 Once the agreements are signed and finalized, those will  
21 be provided to him, also.

22 THE COURT: Okay. With regard to Motion Number Two,  
23 I'm going to grant the motion.

24 MR. McMASTER: Judge, the only limitation that the  
25 State has on that is, they ask for all possible

1 investigations of any witnesses. Certainly if the  
2 State's aware of investigation of witnesses that it  
3 intends to call at trial, we will supply that  
4 information. But there is no way for the State to be  
5 able to learn of all possible investigations of any and  
6 all potential witnesses in this case.

7 We obviously are concentrating on the witnesses  
8 that we intend to call at trial. And with respect to  
9 the local agencies or any investigations that our office  
10 has in fact been made aware of, we will certainly notify  
11 the Defense of those. But we can't give what we don't  
12 know about.

13 THE COURT: Okay. I think Mr. Moore would agree  
14 with that. Am I correct? They can't give what they  
15 don't know.

16 MR. MOORE: That's stated in my motion.

17 THE COURT: Okay.

18 MR. MOORE: It's only what they have. Even if it's  
19 constructive possession of, which is the -- perhaps  
20 police officers know it. If it's communicated to the  
21 State and they know that it might potentially be  
22 mitigating or a potential defense, then they are  
23 obligated to provide it, and Mr. McMaster has just  
24 stated that he is aware of that obligation.

25 I would ask also that the transcript be expedited  
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1 and provided to us as quickly as possible. That is, the  
2 transcript of Ms. Kerchner's proffer of her testimony,  
3 whatever it is.

4 MR. McMASTER: It will be available before her plea.

5 MR. MOORE: When's the plea?

6 MR. McMASTER: Next Thursday.

7 THE COURT: The 23rd. I think that would be  
8 appropriate and timely.

9 Okay. We'll move on to Motion Number Three.

10 MR. MOORE: This is a Motion to Declare Section  
11 921.141 paren 2 and 3 Florida Statutes, Unconstitutional  
12 Because Mitigation Must Outweigh Aggravation.

13 Again, I'm aware of the case law which interpreted  
14 that statute as being constitutional; however, it  
15 creates a defacto presumption that that is appropriate.  
16 In other words, once a Defendant's found guilty, it's  
17 presumed that he will and should get the death penalty,  
18 unless the Defendant then proves that life should be an  
19 appropriate sentence.

20 So, that creates a greater burden on the Defendant  
21 than on the State, and the burden should not be on the  
22 Defense and it is, by virtue of the fact that the  
23 wording of this is reversed.

24 And again, that's in the statute in the sections  
25 that I just provided, and in Jury Instruction 7.11,

1 which deals with the penalty phase, which also says that  
2 the Defendant must prove that mitigated circumstances  
3 outweigh aggravating circumstances.

4 For that reason, I would argue that it's  
5 unconstitutional; although I'm aware of the rulings by  
6 the Florida Supreme Court that are otherwise. That's my  
7 motion.

8 THE COURT: Okay. Hear response from the State.

9 MR. McMASTER: Judge, there are a total of ten  
10 different motions attacking the death penalty statute as  
11 being unconstitutional. Several of them attacking it  
12 overall; a number of them attacking just very specific  
13 aggravators individually. I would suggest that it's  
14 probably easier to handle all of the combined  
15 constitutionality motions at one time.

16 But particularly with respect to the one in Number  
17 3. The State has a case to present to the Court, it's  
18 Supreme Court of Florida case of Foster versus State, it  
19 was rendered on October 17th of 2013, and it dealt with  
20 this precise issue.

21 May I approach the Court?

22 THE COURT: Yes, you may.

23 MR. McMASTER: The Caldwell issue about shifting the  
24 burden of proof and the argument that the statute  
25 requires the Defense to argue that their mitigation must

1 over weigh the aggravators. And if you look at Page 27  
2 of the opinion, it's the printed Page 27, it's a  
3 different page, obviously, in the actual opinion.

4 Starting at head notes 54 and 55 on the bottom  
5 left-hand corner, they specifically address that  
6 particular issue and go through how all of these jury  
7 instructions and all of the arguments made under  
8 Caldwell versus Mississippi, which is the main case  
9 cited by the Defense on this issue, do not violate the  
10 constitution. So, we would ask that motion under Number  
11 3 be denied.

12 THE COURT: Okay. The motion under Number 3 is  
13 denied.

14 Number 4.

15 MR. MOORE: Yes, ma'am. Motion for Notice of  
16 Aggravating Factors. It's provided in State versus  
17 Steele, 921 So.2d 538 at Page 531, that it would be  
18 appropriate for the Court to direct the State to list  
19 its proposed aggravating circumstances.

20 Of course, I can guess what they are, but I  
21 shouldn't have to guess, and I shouldn't have to spend  
22 time on behalf of Mr. Bradley or any other client  
23 preparing to answer for aggravating circumstances that  
24 the State is not seeking.

25 There is a Rule of Procedure which puts on the  
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1 Defense an obligation to identify mitigating  
2 circumstances with no corresponding obligation on the  
3 State to do the same. And that is 3.202. And it would  
4 seem only fair that given that that burden is on the  
5 Defense under 3.202, and in light of the Florida Supreme  
6 Court acknowledging that it is appropriate for a Trial  
7 Court to enter such an Order, that the Court enter that  
8 Order.

9 It does not limiting on the State if the State can  
10 show -- I don't know what the standard is, I don't think  
11 any is established if there are additional aggravating  
12 circumstances, other than the ones that are listed, that  
13 they are not limited from presenting those to the Court,  
14 as well, and to the jury.

15 So, that the request is just briefly to ask the  
16 Court to enter its Order requiring the State to list the  
17 aggravating circumstances that the State intends to  
18 present to the Court and to the jury in this case.

19 THE COURT: Hear response from the State.

20 MR. McMASTER: Judge, the case that the Defense  
21 argues says that it's okay for the Court to do that or  
22 the Court should do that. Actually holds that the Court  
23 didn't abuse its discretion or did not violate clearly-  
24 established principle of law in requiring the State to  
25 provide advanced notice of aggravating factors on which

1 it intended to rely.

2 What the Court actually held was whether to require  
3 the State to provide notice of aggravating factors upon  
4 which it intends to rely in a capital murder prosecution  
5 is within the Trial Court's discretion.

6 You can do it; you certainly have the discretion to  
7 do it. I hear Mr. Moore saying that he shouldn't have  
8 to guess as to what the aggravators are going to be that  
9 the State intends to utilize. However, it's interesting  
10 to note that in the motions that he did file asking for  
11 certain portions of the death penalty statute to be  
12 found unconstitutional, the aggravators he attacked were  
13 B, D, E and I. Those are aggravators that the State  
14 intended to use, so obviously he didn't have too much  
15 trouble in finding those.

16 The only two that he missed that the State does  
17 intend to rely on are Section A, that the capital felony  
18 was committed by a person previously convicted of a  
19 felony and under sentence of imprisonment or placed on  
20 community control or on felony probation.

21 And the aggravator of J, the victim of the capital  
22 felony was a law enforcement officer engaged in the  
23 performance of his or her official duties.

24 None of which should be a secret under the facts  
25 that have been disclosed by the State in this case.

1           So, I have just disclosed that Mr. Moore correctly  
2           guessed as to four of them, and he left out the other  
3           two that the State intends to rely on.

4           THE COURT: Okay. I would agree that the standard  
5           is the total discretion as to the judge, but I am going  
6           to grant the motion.

7           MR. McMASTER: Do you want us to put that in writing  
8           or is my oral --

9           THE COURT: I was going to say I think you just did  
10          it, but I would ask that you put that in writing, if you  
11          would, please.

12          MR. McMASTER: Yes, ma'am.

13          THE COURT: Okay. As to Number 5.

14          MR. MOORE: That would be the Motion to Request the  
15          Court State the Bases of its Rulings, if requested. And  
16          the reason for that, of course, is to have -- to provide  
17          the best possible appellate review in a case where if  
18          there is a death sentence, it will automatically be  
19          reviewed by the Florida Supreme Court. And if it's  
20          going to be properly litigated at the trial level, and  
21          in a situation where we are requesting the Court to  
22          state the basis of its ruling, respectively, of course,  
23          what the rule is that the Court is basing the ruling on,  
24          what the law is, what statutes, then we can address it  
25          as thoroughly and completely at the trial level as we



1 can.

2 That would enable us then to perhaps, again,  
3 respectfully, find cases which might suggest a different  
4 ruling for the Court to make. And can be properly  
5 litigated at the trial level.

6 But we're not requesting that every time the Court  
7 make a ruling that it state the case law, the rule and  
8 so forth. But if there are situations where we are  
9 requesting that the Court provide the basis for that  
10 ruling, it is done for us to perfect the record in a way  
11 that will give the Florida Supreme Court a most broad-  
12 based and a most thorough basis for its ruling for its  
13 review of the sentence, if it gets to the Florida  
14 Supreme Court.

15 THE COURT: Okay.

16 MR. MOORE: So, what I'm asking is, if during the  
17 course of the trial, we are sentencing or other hearings  
18 pretrial, that the Court makes a ruling, and we say,  
19 will the Court state a basis for its ruling, that the  
20 Court do so. That's what we're asking.

21 THE COURT: Okay. I'm not going to give the State  
22 an opportunity to respond. I'm going to deny this  
23 request, with all due respect.

24 But Mr. Moore, I will tell you that the Court will  
25 make its best effort to rule based on the evidence and

1 the law presented by the parties, and do its best to  
2 state on the record the basis for its ruling, either on  
3 the record or in writing, but I'm not going to enter an  
4 Order with regard to this. I'm going to deny the  
5 request.

6 MR. MOORE: And on that note, Judge, if during the  
7 course of the trial we disagree with the Court's ruling,  
8 and it could happen --

9 THE COURT: I agree.

10 MR. MOORE: -- and we then may ask the Court to hear  
11 our -- of course, the Court will hear our side of it --  
12 but then to at least entertain the idea of us providing  
13 case law contrary to that. And I know the Court will do  
14 that, as well. But we may ask the Court to state its  
15 basis.

16 And I understand the Court's not ruling that it  
17 will, but we may be in a situation where we will be  
18 asking the Court. And of course, this is all done  
19 respectfully, not to try to argue with the Court. But  
20 once we understand that we're not precluded, we're not  
21 foreclosed from asking the Court to state the basis of  
22 its ruling --

23 THE COURT: I'm not going to enter a written Order,  
24 but you can request that the Court give you -- you can  
25 make that request.

1           Okay, all right. Number 6.

2           MR. MOORE: Your honor, there are cases contrary to  
3 what I'm asking in this motion, which is entitled Motion  
4 to Preclude Capital Punishment as a Possible Sentence.  
5 And they are the Parker case and the Blackwelder case,  
6 which are cited in the motion.

7           The basis for the motion is aggravating  
8 circumstances are not identified in the indictment,  
9 which under the ruling of Apprendi, would be required,  
10 although -- and Ring, as well -- although the Florida  
11 Supreme Court has declined to follow Ring, and has ruled  
12 against us in these two cases that I just provided.

13           And also because the indictment does not allege  
14 aggravating circumstances, it does not allege a capital  
15 offense. Because as alleged, it leaves out an element  
16 of a capital offense. Capital offense requires proof of  
17 an aggravating circumstance, at least one, and that's a  
18 fact that must be proven but beyond a reasonable doubt  
19 unanimously by a jury, and that's the Ring case, that's  
20 the Apprendi case.

21           But however, under Florida's death penalty capital  
22 sentencing scheme, the State is not required to allege  
23 aggravating circumstances, and can merely present them  
24 at the penalty phase of the trial.

25           So, the argument here is the State has not alleged  
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1 a capital offense because it has not alleged any  
2 elements of the capital offense which would specifically  
3 be the aggravating circumstances, and because the  
4 statutory scheme permits that proceeding, that  
5 procedure, it's unconstitutional. And because the State  
6 has not, on the basis of my argument, alleged a capital  
7 offense, then the jury should not be questioned on the  
8 death penalty and the State should not be able to seek  
9 the death penalty in this case.

10 THE COURT: Hear response from the State.

11 MR. McMASTER: Judge, the State, of course, is going  
12 to adopt the two cases that he acknowledges rule against  
13 him from 2003 and 2005.

14 Meanwhile, in the intervening eight years since their  
15 most recent case in the motion, the Supreme Court has  
16 addressed those specific issues two more times -- much more  
17 than two -- two most recent, some of the more recent,  
18 specifically are Supreme Court of Florida Hoskins versus  
19 State in April of 2007 and Martin versus State from September  
20 20th of 2012, with that rehearing denied February 1st of  
21 2013.

22 Law has not changed since the last case that Mr.  
23 Moore cited, says that our system is constitutional and  
24 he's not entitled to what he's asking.

25 THE COURT: Okay. Motion Number 6 is denied.

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1 MR. MOORE: Motion Number 7 is the Motion to Declare  
2 921.141(1) Florida Statutes Unconstitutional. And in  
3 the alternative, to bar the statutes of hearsay evidence  
4 at the penalty phase. And what that subsection provides  
5 is the State may introduce hearsay at the penalty phase  
6 as long as the Defendant has a reasonable opportunity to  
7 rebut it, but since that statute was adopted, the U.S.  
8 Supreme Court passed on the Crawford case, and that has  
9 since been adopted as a law in Florida by the Florida  
10 Supreme Court.

11 And more specifically, the case of Rogers and  
12 Franklin, as I stated in my motion, Rogers versus State  
13 948 So.2d 655 at 663 in 2006, and Franklin versus State,  
14 965 So.2d 779 at Page 88 in 2007, held that the Crawford  
15 case applies to the penalty phase.

16 So, we would, number one, argue that the Florida  
17 Statute is unconstitutional because it's a violation of  
18 Crawford and that it permits the introduction of  
19 hearsay, and number two, and if the Court denies that,  
20 we'd ask the Court to enter an Order that the State is  
21 not permitted to introduce hearsay, that is testimonial  
22 hearsay, at -- or any kind of hearsay -- at the penalty  
23 phase.

24 THE COURT: Okay. Hear response from the State.

25 MR. McMASTER: Judge, based on the three cases that  
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1 the State has already submitted to the Court, Foster,  
2 Hoskins and Martin, it's clear that the Florida Supreme  
3 Court has upheld the constitutionality of this statute.

4 State's aware of the Rogers case and the limitation  
5 on presenting hearsay during the penalty phase and will  
6 certainly follow the law with respect to the testimony  
7 we present.

8 THE COURT: I'm going to deny the motion with regard  
9 to the constitutionality. And I'll reserve ruling until  
10 a specific objection on hearsay is posed at the penalty  
11 phase. I don't want to -- I mean, may be some hearsay  
12 that is not admissible, and so I don't want to -- by  
13 denying your motion with regard to unconstitutionality,  
14 doesn't mean I'm denying it with regard to other issues  
15 that may come up with regard to a specific objection.

16 So, I'll reserve that at the penalty, for you to  
17 re-argue your objection at the penalty phase.

18 Okay. Give me just a moment. Mr. Moore, how come  
19 you don't have proposed Orders to hand me? I'm okay.  
20 With regard to --

21 MR. MOORE: I'll have them before the end of the  
22 day, Judge. Just make a ruling granting my motion, and  
23 I'll stop what I'm doing and print it out right now.

24 THE COURT: We're going to prepare the Orders, so  
25 we'll have those.

1           Okay. Number 8.

2           MR. MOORE: That would be Motion to Declare Section  
3           921.41(5)(I) Florida Statutes Unconstitutional as  
4           Written and Applied. That's the cold calculated  
5           premeditated aggravating circumstance.

6           It's number one, it's vague and it's over broad;  
7           number two, and because of that, provides no guidance to  
8           the jury; number three, it's not alleged in the  
9           indictment and therefore does not say that element of a  
10          capital offense under Ring and Apprendi, and it's not  
11          applicable here, which of course I'd have to be at a  
12          posture, having filed a C-4 Motion, and I'm not aware of  
13          any vehicle which permits me to attack an aggravating  
14          circumstance pretrial, other than to put it in the form  
15          of this motion and say that it doesn't apply here.

16          But the Court, of course, would have to have a  
17          factual basis to make a ruling on that basis. I'm just  
18          throwing it out there. That one ground, which is that  
19          it doesn't apply.

20          But as to the other three grounds of Overbreath  
21          (Phonetic) and Daignus (Phonetic), not alleged in the  
22          indictment and no guidance to the jury that it would  
23          then render that statute constitutional on its face.

24          THE COURT: Hear response from the State.

25          MR. BROWN: Judge, we would ask the Court to follow  
                  RYAN REPORTING

1 -- obviously there has been I would say hundreds of  
2 Florida Supreme Court cases addressing this particular  
3 aggravator. It has never been found to be  
4 unconstitutional. We'd ask the Court abide by those,  
5 and as well as the Ring aspect of this motion, and ask  
6 the Court to deny it.

7 And obviously the Court will have the final  
8 decision prior to instructing the jury whether we've met  
9 our burden of proof to get this aggravated to the jury,  
10 then if it does go to the jury, then the Court is the  
11 ultimate decision maker in finding whether we've proven  
12 it, if there's a death recommendation.

13 So, factual circumstances will be for the jury and  
14 ultimately -- and the Court to decide, but at this point  
15 we'd ask the Court deny the motion.

16 THE COURT: I'll deny it as to the being facially  
17 unconstitutional. And I'll reserve ruling as to whether  
18 it's applicable or not, depending on what comes before  
19 the Court with regard to proof.

20 Okay. Number 9.

21 MR. MOORE: Number 9, Objection to Death  
22 Qualification of the Jury, Motion to Bar Imposition of  
23 the Death Sentence.

24 A memorandum of law in support of that motion.

25 The basis of it is not just related to one aggravating  
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1 circumstances but all, and that it does not require that  
2 aggravating circumstances, which are elements of a  
3 capital offense, that they be charged in the indictment.

4 Under the Florida Death Penalty scheme, the  
5 Defendant is denied a fair jury because of the  
6 elimination of people from sitting on the jury who have  
7 strong feelings against the death penalty. On the other  
8 hand, people who feel that the death penalty is  
9 appropriate are permitted to sit on the jury.

10 And so, the jury is skewed to find for death under  
11 the case law and the research in the case law of the  
12 Hobe (Phonetic) case, which is in a later motion asking  
13 for individual sequestered voir dire, it has been  
14 established that a death-qualified jury is a conviction-  
15 prone jury. And that is in a sense of, based upon  
16 factors which aren't related to the facts in evidence at  
17 the trial, it's just that they are more inclined to  
18 convict as just a general principle. And there have  
19 been scholarly articles and research papers and research  
20 done which established that as a fact.

21 So, under the Florida sentencing scheme, because  
22 death-scrupled people are permitted to sit on the jury,  
23 whereas people who are against the death penalty are  
24 removed from the jury, the jury itself is composed in a  
25 way that's unfair to the Defendant.

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1 Florida is the outlier state, which is the only  
2 state which permits a death recommendation on a mere  
3 majority, and the only state where either an aggravating  
4 -- all of the other states, they require an aggravating  
5 circumstances or the death recommendation or both, be  
6 either unanimous or by a super majority, and unless I'm  
7 wrong, I believe all the other states require one or the  
8 other to be found unanimously.

9 Under the Federal system, the United States  
10 requires that the jury recommendation be unanimous. But  
11 in Florida, it's a mere majority. And so, for that  
12 reason, we would move for the Court -- and I am aware of  
13 the case law, which I've cited in my motion, which holds  
14 otherwise -- I'm asking for the Court to enter its Order  
15 finding the Florida Statute 921.141 unconstitutional.

16 THE COURT: Hear response from the State.

17 MR. BROWN: State would ask the Court to deny the  
18 motion, follow the existing case law by the Florida  
19 Supreme Court.

20 THE COURT: With regard to Defense Motion Number  
21 Nine, said motion is denied.

22 Okay. Motion Number Ten.

23 MR. MOORE: Motion to Declare Section 921.141(5)(e)  
24 Florida Statutes, which is the victim was a law  
25 enforcement officer, to declare that unconstitutional as

1 written and as applied. This would be doubling with  
2 respect to the other aggravating circumstances I think  
3 the State may seek. I think they've already announced  
4 that they are going to seek witness elimination. It is  
5 not alleged in the indictment. The substance of this  
6 factor is controlled by the Florida Supreme Court in  
7 violation of the separation of powers. In other words,  
8 it was enacted by the Florida Supreme Court, when it  
9 should have been enacted by the legislature, and because  
10 of that, the separation of powers would render the  
11 statute unconstitutional.

12 And, let's see, I've already provided. It's not  
13 alleged in the indictment.

14 So, for those reasons we'd ask -- and again, I'm  
15 aware of the case law which holds to the contrary -- the  
16 Court enter its Order to find that aggravating  
17 circumstance unconstitutional.

18 THE COURT: Hear response from the State.

19 MR. BROWN: Judge, same response, we'd ask the Court  
20 follow existing case law, deny the motion.

21 THE COURT: Okay. With regard to Motion Number Ten,  
22 said motion is denied.

23 Motion Number 11.

24 MR. MOORE: Is a Motion to Declare Section  
25 921.141(5) bravo Florida Statutes, unconstitutional as  
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1 written and as applied. And that is the prior violent  
2 felony aggravating circumstance and that it does not  
3 limit the class of people who are eligible for the death  
4 penalty.

5 One of the reasons is it can include a prior  
6 violent felony which is not final. It could include a  
7 prior violent felony which is on appeal. And it  
8 includes violent felonies occurring before sentencing  
9 and not before the commission of the offense.

10 And in the presentation of evidence and the prior  
11 violent felony, the State is permitted to an extent to  
12 provide the factual background of the prior violent  
13 felonies, which would include issues such as race and  
14 gender and socioeconomic status, which are matters which  
15 should not be heard by a jury trying to make a  
16 recommendation on whether to sentence the Defendant to  
17 death in this particular case.

18 So, for that reason as applied and on its face,  
19 that section is unconstitutional. We'd ask the Court to  
20 enter an Order to that effect.

21 And I'm aware of the case law which holds  
22 otherwise.

23 THE COURT: Hear response from the State.

24 MR. McMASTER: I think he just acknowledged he's  
25 aware of the case law that holds otherwise. We just ask  
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1 the Court to rely on that.

2 THE COURT: Okay. Motion Number 11 is denied.

3 Okay. Number 12.

4 MR. MOORE: Is a Motion to Declare 921.141(5) delta,  
5 the felony murder aggravating circumstance of the  
6 Florida Statute, for the Court to declare that  
7 unconstitutional as written and as applied.

8 Again, it's not alleged in the indictment, it does  
9 not limit the class of death eligible. It's an  
10 aggravating circumstance, it repeats an element of the  
11 effects and just because a Defendant's convicted of a  
12 felony murder such as a robbery, which is alleged in  
13 this case, it could be the basis for an aggravating  
14 circumstance, irrespective of the fact that there may  
15 not have been any premeditation.

16 And so, that does not narrow, it broadens a class  
17 of people who are eligible for the death penalty.

18 As stated in the motion, the case law which has  
19 addressed that issue by the Florida Supreme Court, which  
20 disagrees with me, and that would be my motion.

21 THE COURT: Hear response from the State.

22 MR. McMASTER: Same response. Ask to follow the  
23 existing case law, deny the motion.

24 THE COURT: Okay. Motion Number 11 is denied.

25 Motion Number 13.

1           MR. MOORE: That was 12. Number 13 is a Motion for  
2 Finding the Fact by the Jury. First of all, in the  
3 first paragraph cited State versus Steele, which held  
4 that it would be a violation of the fundamental  
5 requirements of the law for the Court to enter an Order  
6 or permit the jury to be presented with a jury  
7 requirement specific finding of aggravating  
8 circumstances.

9           And so, however, I mean, you don't ask, you don't  
10 get. And so I'm asking at the trial level and hoping  
11 that the Florida Supreme Court will consider this in a  
12 more favorable light if it gets there, for the appellate  
13 -- mandatory appellate review to have any meaning at  
14 all, the Appellate Court has to know what the jury  
15 decided.

16           And if the jury's required to find an aggravating  
17 circumstance unanimously, and they're given up to 15,  
18 which is I think that's the number of aggravating  
19 circumstances we're up to. Not that they're going to  
20 get that many in this case, it's impossible to tell  
21 whether they found one or two or five or 12, which is  
22 the number of people on the jury. And that can hardly be  
23 said that the finding of any aggravating circumstances  
24 is unanimous. Not unanimous, but beyond -- that is not  
25 a finding done on a reasonable doubt unless we know the

1 number of jurors who are voting in favor of finding a  
2 specific aggravating circumstance. Or -- but you know,  
3 it's impossible to tell what their vote is unless a  
4 specific verdict form is completed by the jury.

5 And I'm aware that the Steele case says you can't  
6 do that, but I'm asking at the trial level and hoping  
7 that the Florida Supreme Court will listen to that  
8 request if we get to there, if we get to the Florida  
9 Supreme Court.

10 THE COURT: Okay. Hear response from the State.

11 MR. BROWN: The State's asking the Court follow the  
12 essential requirements of the law and deny Defense  
13 motion.

14 THE COURT: Okay. Motion Number 13 is denied.

15 With regard to Motion Number 14 --

16 MR. MOORE: The lethal injection motion I did not  
17 file.

18 THE COURT: Okay. I was going to say I do not have  
19 that motion.

20 MR. MOORE: Right. That's why.

21 THE COURT: So, there's no Number 14. So, the Court  
22 takes no action with regard to that.

23 MR. MOORE: Next will be 15.

24 COURT: Proceed to Number 15, yes, sir.

25 MR. MOORE: During the course of the trial, I would  
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1 expect -- can't say, maybe expecting is too strongly  
2 stated -- but there needs to be an awareness from the  
3 Bench of when things get heated, when things -- and  
4 toward the end of a long trial, then patience wears out  
5 in terms of everybody in the courtroom, that during the  
6 heat of battle things get said, and this motion seeks to  
7 avoid that, to obviate that, and just to bring to the  
8 attention of the counsel for the State and for the  
9 Defense, as well, the importance of reigning it in and  
10 presenting argument which is proper.

11 And under the circumstances, that's going to be a  
12 challenge in this case on both sides, but that's what  
13 this motion is directed to. And one of the factors here  
14 which is going to be a big issue will be mitigation.

15 And for argument which could be described on the  
16 State's side as arguing that evidence of mental illness  
17 or intoxication is not really mitigation, which will be  
18 improper, in any way making a Caldwell argument that the  
19 responsibility for the sentence is in any way removed  
20 from the jury and emphasize that it's on the Judge,  
21 those would be improper types of argument.

22 I've listed all of the types of improper argument  
23 which the Florida Supreme Court's addressed. And I've  
24 tried cases with Mr. Brown and Mr. McMaster before, and  
25 I don't expect -- what I have come to know as an ethical



1 way of conducting themselves, I don't expect that to  
2 change, but in the heat of battle, things happen, and  
3 I'm asking that the Court be sensitive to that and that  
4 the State Attorneys be sensitive to that, too.

5 So that, just as a general matter, I think it would  
6 be more appropriate to raise those objections as they  
7 come up, if they come up, and to object and get rulings  
8 at that time; but however, I'm making that presentation  
9 to the Court at this time.

10 THE COURT: Okay. Response from the State.

11 MR. BROWN: Judge, we're aware what our obligations  
12 are under the case law. We intend to follow that. I've  
13 not had a case reversed on appeal yet, and I don't  
14 intend to start with this one.

15 So, we're going to abide by the requirements and  
16 the restrictions on our behavior and don't anticipate a  
17 problem.

18 THE COURT: Okay. I am familiar with Mr. McMaster  
19 and Mr. Moore. I have tried lengthy trials with both of  
20 them. Never so far as seen either one of you raise your  
21 voice or have a hair out of place when you're arguing  
22 any motion.

23 So, having said that, I don't expect to have an  
24 issue with that. I'm not familiar with some of the --  
25 I'm familiar with the other attorneys; I'm not familiar

1 with them in a lengthy trial setting, but I don't  
2 anticipate this is going to be an issue.

3 I mean, I don't know whether to grant it or deny  
4 it, because my expectation is that we're going to have  
5 proper argument and everyone's going to be professional  
6 and abide by the rules of professionalism and the rules  
7 set forth by the Florida Bar with regard to that issue.

8 So, having said that, I don't know whether I grant  
9 this motion or deny this motion. I could grant it as to  
10 all attorneys present before the Court in this motion.  
11 I don't want to just direct it towards the State. I  
12 think it should be directed towards all attorneys if I  
13 do grant it.

14 MR. MOORE: I did include that, myself in there. I  
15 intend to comport myself ethically in this case.

16 THE COURT: Okay.

17 MR. MOORE: So, if the Court wants to grant it,  
18 that's great.

19 THE COURT: With regard to all attorneys, I'll grant  
20 the motion.

21 Okay. Number 16.

22 MR. MOORE: Motion to Compel the State to Furnish  
23 Penalty Phase Witness List. Defense is required to  
24 present and has done, and we have filed a 3.202 motion  
25 identifying our mitigation witnesses, penalty phase

1 witnesses. We've also provided a lengthy list of  
2 witnesses which I will now identify as penalty phase  
3 witnesses, with the exception of Dr. Olander and Dr.  
4 Skolly, but the rest are penalty phase witnesses.

5 And we would ask the State identify those witnesses  
6 that it intends to call at the penalty phase. We've  
7 gotten just a blanket witness list in response to our  
8 demand, which under the Administrative Order, the State  
9 is required to give us in its response a witness list  
10 which has upwards of 200 names on it, so it's  
11 impossible, other than just taking wild guesses who's  
12 going to be testifying at the penalty phase.

13 So, we'd ask the Court to enter an Order requiring  
14 the State to identify those witnesses it intends to call  
15 at the penalty phase.

16 THE COURT: Hear response from the State.

17 MR. McMASTER: Now that Mr. Moore has identified the  
18 witnesses that he provided, the 26 witnesses that he  
19 just listed as Defendant's witnesses, supplemental  
20 witnesses recently, as witnesses for the penalty phase,  
21 is that a statement that those witnesses will not be  
22 called in the guilt phase?

23 MR. MOORE: Olander, Dr. Olander, Dr. Skolly will,  
24 and the other witnesses will be penalty phase witnesses.

25 MR. McMASTER: Only.

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1 MR. MOORE: Yes.

2 MR. McMASTER: Judge, I don't believe it's required  
3 by the Rule. I think the Court probably has the  
4 discretion to order it. We have provided all of the  
5 discovery in this case, including the witnesses' names  
6 and addresses, copies of their statements, copies of the  
7 interviews by the police department.

8 Just as with the aggravators that Mr. Moore was  
9 able to discern that we were going to use, he knows who  
10 the witnesses are that we would have to call to  
11 establish those aggravators.

12 So, I don't think it's necessary. The State would  
13 object to it.

14 THE COURT: Okay. Just as I did the other motion.  
15 I think the Defense could probably figure it out, but I  
16 don't think that's their obligation to try to guess in  
17 any way, shape or form with regard to that so I'm going  
18 to grant the motion.

19 MR. MOORE: Well, then, any qualification I put on  
20 my intended purpose for these witnesses is withdrawn.  
21 Fair game. Other than having identified Dr. --

22 THE COURT: I granted your motion.

23 MR. MOORE: I thought you said you didn't.

24 THE COURT: No, I granted our motion.

25 MR. MOORE: Okay. Well, all right, let me --

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1 THE COURT: I granted your motion.

2 MR. MOORE: I got to thinking --

3 THE COURT: You were anticipating a denial, but I  
4 granted your motion.

5 MR. MOORE: There are about a dozen witnesses with  
6 the Wuesthoff Reference Lab, and it's possible that some  
7 of those may be called at the guilt phase. That's a  
8 possibility.

9 Let me just step over here for a second.

10 THE COURT: Okay.

11 MR. MOORE: Okay. So, any witness on the list which  
12 would be involved with the toxicology, lab or the jail  
13 individuals who were present when a blood and urine  
14 sample were taken from Mr. Bradley, those people could  
15 be called at the guilt phase, but the rest are penalty  
16 phase witnesses.

17 THE COURT: Your motion refers to the State to  
18 compel to furnish a penalty phase witness list, so that  
19 motion is granted.

20 MR. MOORE: All right.

21 THE COURT: Okay. And we can move -- I didn't set a  
22 time limit for that. Do you want a time limit?

23 MR. MOORE: As soon as possible, so we can --

24 THE COURT: I didn't set a time limit for the other  
25 one, as well. Mr. McMaster.

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1 MR. McMASTER: Ten days.

2 THE COURT: Okay. You're okay with ten days, Mr.  
3 McMaster?

4 MR. McMASTER: Yes, ma'am.

5 THE COURT: Okay. Within ten days, that goes to  
6 Motion Number 16, and that also should go with -- I'll  
7 do that with Motion Number 4, as well.

8 MR. McMASTER: That's fine.

9 THE COURT: Okay.

10 MR. McMASTER: Your Honor, excuse me, if the Court  
11 were here everyday when I'm here, I'll be happy to do it  
12 faster.

13 THE COURT: Okay. I don't know if I can do that.

14 Okay. Number 17. That motion's not before me, so  
15 I'm not addressing that.

16 Go ahead.

17 MR. MOORE: Well, any of the grounds in this, which  
18 is a -- let me state what it is. Motion to Declare for  
19 the Death Penalty and Section 921.141 Florida Statutes  
20 Unconstitutional Because of Faulty Appellate Review,  
21 I've already argued some of the grounds in other  
22 motions, but I'm going to make this argument anyway with  
23 respect to this motion.

24 That the Florida Statute is unconstitutional in  
25 that it does not provide adequate guidance to the jury

1 with respect to aggravating and mitigating circumstances  
2 or what to do with them.

3 In that it provides an inadequate guidance with  
4 respect to victim impact evidence and it gives no  
5 vehicle for establishing which if any aggravating  
6 circumstances are found beyond a reasonable doubt.

7 So, other than these vague instructions which are  
8 given to the jury, there is no way of knowing whether  
9 the requirements of a properly found and opposed death  
10 sentence, that is that the aggravating circumstances be  
11 found beyond a reasonable doubt. There is no way of  
12 knowing if the jury has complied with that requirement.

13 And so, the Appellate Court is in a vacuum and  
14 cannot tell whether the statute has been complied with.  
15 So, there is inadequate Appellate review, and the  
16 constitutional mandate is not met, and for that reason,  
17 the statute, the Florida Death Penalty Scheme is  
18 unconstitutional.

19 THE COURT: Hear response from the State.

20 MR. McMASTER: Judge, obviously under the Foster,  
21 Martin and Hoskins cases that we have submitted to the  
22 Court, the Florida Supreme Court has stated that the  
23 statute's constitutional.

24 And in Foster, they specifically say the standard  
25 penalty phase jury instructions fully advise the jury of

1 the importance of its role, correctly state the law, do  
2 not denigrate the role of the jury and do not violate  
3 Caldwell versus Mississippi.

4 It's obvious that the Florida Supreme Court, which  
5 is an Appellate Court and is directly involved in  
6 Appellate review of the death penalty cases, is  
7 confident that its Appellate review is full, it's  
8 complete and it's adequate and constitutional.

9 We would ask that that motion be denied.

10 THE COURT: Motion Number 17 filed on behalf of the  
11 Defense is denied.

12 Okay. Number 18.

13 MR. MOORE: Number 18, Defendant's Motion for Jury  
14 Instruction Delineating all Mitigating Factors under  
15 Florida Statute 921.141(6) paren Hotel(h).

16 We're asking for the Court -- in this case there is  
17 some Florida Supreme Court precedent in the cases that  
18 I've cited supporting this request that the jury be  
19 provided with all of the aggravating circumstances which  
20 the Defense is capable of putting forward, and not be  
21 limited to the catchall mitigating circumstance which is  
22 provided in the statute, which is just a generic  
23 everything related to the Defendant, the case and the  
24 sentence.

25 But in the cases that I've cited, particular Downs  
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1 MR. BROWN: Judge, the difference is, the State, we  
2 have to list all of our aggravating circumstances  
3 because the jury is limited just to those aggravating  
4 circumstances.

5 There's the catchall provision here which allows  
6 the jury to look at, go beyond these statutory  
7 mitigators and look at other mitigation evidence that  
8 the Defense provides, and they don't have that same  
9 limitation that the State has.

10 We're aware of what Justice Parenti, her position  
11 is. That's never been the majority position of the  
12 Florida Supreme Court. They have never reversed a Court  
13 that simply relied on the catchall provision. I think  
14 at this time it's a little bit premature. I think the  
15 appropriate time for the Court to rule on this is when  
16 they present their mitigation evidence and then present  
17 their proposed jury instruction. I think the Court at  
18 that point, it's within your discretion. You can rely  
19 on the catchall provision, you can list specifically  
20 every one they request or you narrow it down. And the  
21 only real way to make that decision for us to  
22 appropriately respond is, when we get to that point, if  
23 we get there and when we get there, to address it  
24 request by request.

25 So, I'd ask the Court to reserve on this motion  
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1 until we reach that point in the penalty phase.

2 MR. MOORE: What I'd point out that is significant,  
3 that the only times that the Florida Supreme Court has  
4 addressed the issue, they have approved it. And there  
5 has never been a Supreme Court decision which  
6 disapproves of that procedure.

7 And so, the Court can infer from that, it's  
8 entirely within this Court's discretion and would not be  
9 inappropriate nor prejudicial to the State. If the  
10 voice of the Florida Supreme Court, although in a  
11 minority, approves it and the speaking as a panel the  
12 Florida Supreme Court has not disapproved of that  
13 proceeding, then it would be entirely appropriate for  
14 the Court to grant that motion.

15 And so, we can revisit it later when we are talking  
16 about what exactly we have and what we want on that  
17 list. But if the Court's going to reserve ruling, I  
18 respect that and we can address it later. But I want  
19 the Court to consider that it has not been disapproved  
20 by any Court.

21 THE COURT: Okay. We'll reserve ruling with regard  
22 to Motion Number 18.

23 Okay. Motion Number 19.

24 MR. MOORE: Let's see. This is the Motion in Limine  
25 Regarding Procedures. I would ask that as stated on  
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1 Page 2, just a basic request, which has been granted in  
2 every case that I've done, and there's no precedent one  
3 way or the other in cases that I'm aware of, that as to  
4 mitigating circumstances, they not be referred to as  
5 non-statutory mitigating circumstances or that any  
6 distinction be made by the Court or by counsel for  
7 either side.

8 And as to the next item, which would be the  
9 presence of media, family members, uniformed officers,  
10 shackling of the Defendant, Mr. Pirrolo is going to  
11 address the presence of uniformed officers of the court.

12 As far as who can be present in court, we think it  
13 would be more appropriate to address that at the time  
14 that we invoke the Rule of Sequestration and we see who  
15 the State and who the Defense intends to have present in  
16 the court. We can state our objection to them.

17 We're asking that the media be kept in a designated  
18 area which is as unobtrusive as possible. They  
19 certainly have their rights to be here, but not that's  
20 going to interfere with the trial or distract the jurors  
21 or become a feature of the trial. So, we would ask the  
22 Court to be mindful of that.

23 And we've already addressed the security issue at  
24 the Bench.

25 The only other matter that we haven't addressed,  
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1 then, again, would be the interval between the guilt and  
2 the penalty phases.

3 We would ask the Court to be open to the idea of  
4 the break of the two or three day time period. We have  
5 witnesses who are not in Florida, we have witnesses who  
6 are not in Brevard County, and they have very busy  
7 schedules, and they may require some time to wrap up  
8 what they're doing. Since we can't state with any  
9 precision when they need to be here, we may require some  
10 latitude from the Court in scheduling their presence.

11 And so, I don't see how the Court can rule on that  
12 now, other than to at least acknowledge that there could  
13 be some issues here, and be open to the suggestion of  
14 number one, an issue, maybe some extra time between  
15 guilt and penalty phase, and the issue of who can be  
16 present in Court during the trial.

17 THE COURT: Okay. Response from the State.

18 MR. BROWN: Judge, first, as far as referring to any  
19 mitigators as non-statutory or any other such terms, we  
20 agree to that, we have no intention of ever delineating  
21 to the jury statutory or non-statutory or any other such  
22 term. So, we have no problem with that.

23 Judge, as far as the presence of media, I think  
24 that's within the Court's discretion, setting up the  
25 structure of the courtroom.

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1           Obviously they have a right to be here. But as far  
2 as where they're at, I think that's between the Court  
3 deputies and I'm certain the Court's going to set it up  
4 in a way that it's not going to affect the trial. And  
5 I've had trials with a lot of media coverage, and they  
6 have no intention, at least in prior trials, of becoming  
7 the center of attention. They want to just simply be  
8 there and as unobtrusive as possible.

9           As far as presence of the police, Judge, this is an  
10 open courtroom --

11           MR. MOORE: We're not addressing that now. I'm  
12 sorry, I wasn't clear on that. We have that separate  
13 motion, and Mr. Pirrolo will present that, so I'm asking  
14 respectfully that we defer until that is properly  
15 presented by Mr. Pirrolo.

16           THE COURT: Okay. We talked about the family, and  
17 Mr. Moore even said in his motion that that's going to  
18 depend on when the Rule gets invoked and as to who the  
19 State expects to be present in the courtroom and who  
20 doesn't. So, I think that would be better left to  
21 address at that time.

22           What about time between the trial and penalty  
23 phase. I think I'm going to have to address that at the  
24 time, as well. It may work out that there's time  
25 anyway, it may not, depending on how long the trial

1 goes. We'll just have to readdress it.

2 Obviously, Mr. Moore, if it's a matter of getting  
3 someone flown in and getting someone here, I'm going to  
4 be sensitive to that. If it's a week, I'm going to have  
5 an issue with it. If it's a few days, it probably won't  
6 be an issue.

7 May work out. There's a couple of days there at  
8 the end that I'm not going to be here. So, it may work  
9 out, depending on where the trial goes, it may work out  
10 at that time, as well. We'll just have to see how that  
11 is.

12 Anything else on behalf of the State with regard to  
13 that?

14 With regard to the media, I know there's been some  
15 requests by our media specialist. I haven't had an  
16 opportunity to meet with her yet. I did discuss with my  
17 deputies.

18 When we do jury selection -- no one's made a  
19 request to change courtrooms, and so I haven't  
20 entertained that. If we can stay in this courtroom,  
21 that would be my preference. If we need a bigger  
22 courtroom, 4-D is the biggest courtroom. I'm not  
23 opposed to that. No one's made that request, so I  
24 haven't entertained that. I'm only going to entertain  
25 that if someone makes that request.

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1           Like I said, this is our courtroom, everyone's  
2 comfortable in this courtroom, I'd prefer this  
3 courtroom. But I'm not adverse to having to move if  
4 this courtroom doesn't accommodate everyone. My concern  
5 where this courtroom may not accommodate everyone is  
6 during jury selection.

7           I did speak to my deputies about where everyone  
8 would sit during jury selection because the first three  
9 rows of the back on each side is going to be occupied.  
10 Talked about where the family would sit, we talked about  
11 where the observers would sit with my court deputies,  
12 and where the media would sit.

13           I haven't had media overflow other than the one  
14 side. And I've always given them the back and they've  
15 been in the back and they haven't, as far as I can  
16 observe, they haven't in any way obstructed the court.  
17 I've had the media present in other proceedings before  
18 and I've never had that as an issue.

19           I'm open to discussion about that if it becomes an  
20 issue or if it is an issue, I'm open to discussion about  
21 that. But my concern is like during the jury selection,  
22 depending on how many people are going to be here, then  
23 that may become an issue.

24           Obviously my intention was that there's going to be  
25 two rows open on this side, two rows open on that side,  
RYAN REPORTING



1 media would have this side, or I might move them to that  
2 side, but they've always preferred this side, I think  
3 they have a better view. And move the family to the  
4 other side just during jury selection, it would be the  
5 back row for sure, and then the back two rows would be -  
6 - I mean, reserve one row for the family and one row for  
7 anyone who wants to observe.

8 And I would encourage people that during jury  
9 selection would not be the most opportune time to have  
10 everyone come to court.

11 MR. MOORE: While we're on that subject, are we  
12 going to have enough room in this courtroom to  
13 accommodate the entire venire, which is going to be  
14 huge?

15 THE COURT: We've ordered 53 for each day, for five  
16 days. There would be 21 here. I don't have my little  
17 chart, so I can't remember -- actually, I do. Let me  
18 tell you, hold on.

19 MR. MOORE: Got family and media and security.

20 THE COURT: No, we discussed that. Somewhere in the  
21 -- I mean, I could accommodate twice as many that's here  
22 today. If it's a lot, then we're not going to be able  
23 to accommodate that.

24 That's why I said jury selection would not be the  
25 most opportune time to have people come. Obviously I

1 expect some family members to be here during all phases  
2 of the trial. But jury selection is going to be where  
3 it's going to be the tightest.

4 I've ordered 53 jurors for February the 24th,  
5 February the 25th, February the 26th, February the 27th  
6 and February the 28th. We would have 21 in the box. We  
7 would take up the first three rows of each side. It  
8 would be five, five and six on the right side, and five,  
9 five and six on the left side. That leaves, if I'm  
10 correct -- I can't tell how many rows are back there --  
11 are there five or four?

12 MR. BROWN: Four.

13 THE COURT: That would leave the media to be over  
14 here, and I assume with all due respect to the family,  
15 the media wants to be over here because that's an  
16 unobstructed view of the courtroom. On this side  
17 sometimes the attorneys obstruct the view more. And  
18 that the family would be in the back row. And if  
19 there's people that are present, they would be in the  
20 back row.

21 Jury selection is not usually the most attended  
22 event, that's my experience. But if we can't  
23 accommodate that, we'll have to move to the larger  
24 courtroom.

25 My understanding of the larger courtroom, it's  
RYAN REPORTING

1 more convenient for the media, because they can come in  
2 and out without -- they have a separate little room.  
3 So, they could come in and out without opening doors.

4 I've never had them be a problem, though. Our  
5 media has been very cooperative and very unobtrusive,  
6 never had that be a problem with them coming in and out.  
7 They're very quiet. But they can use their phones and  
8 they can use computers if they're in that other room.  
9 They can't do that so much here.

10 But my understanding of the big courtroom is that  
11 the acoustics are not as good. It's difficult to hear  
12 sometimes. So, I've never been in that courtroom for  
13 any length of time, so I haven't experienced that  
14 myself. I've done a couple of things in there, but not  
15 anything --

16 MR. MOORE: We have, it's terrible. So, perhaps we  
17 could start out in here. I was just raising it to see  
18 what the Court's thoughts --

19 THE COURT: I mean, I have addressed that, I have  
20 thought about that, it hasn't been arbitrary, I've spent  
21 some time on it. So, that's -- like I said, the only  
22 person I haven't talked to about that is Michelle  
23 Kennedy in Court Administration with regard to the  
24 media's request. But I understand they're asking for  
25 one feed, so that might not be an issue. That's my

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1 understanding. I haven't talked to her, though.

2 And my only concern is during jury selection, if  
3 there's going to be enough room. I don't know how many  
4 family members or how many observers intend to be here.  
5 It might be a little cramped with regard to that. But  
6 only during jury selection, I believe.

7 So, I'm going to leave it at that. I don't have  
8 any request yet. Maybe the State knows more or the  
9 Defense knows more than I do at this moment. Sometimes  
10 I think I'm the last person to know some of this. But  
11 if I need to address, if you ask for a larger courtroom  
12 and you articulate that reason, I will certainly  
13 entertain that.

14 MR. MOORE: Let me raise this motion at this time.  
15 It's not on my list, I have provided it to the State and  
16 I've provided a copy to the Court, which would be the  
17 Motion for Change of Venue. Could we address that now?  
18 I think the State has a copy.

19 THE COURT: Let me finish this motion, Number 19.

20 MR. MOORE: Sure.

21 THE COURT: I'm going to grant with regard to a  
22 Motion in Limine with Non-statutory Mitigating Factors.  
23 I'm going to reserve ruling on the rest, and you can  
24 bring those issues up in the event they become an issue.  
25 Okay?

1           Now, does the State want to address the Motion for  
2 Change of Venue at this time or...

3           MR. McMASTER: That's fine, Judge. I would like to  
4 address the sequestration motion also today, if we  
5 could.

6           MR. MOORE: Sure.

7           THE COURT: Okay. If you could, I need to know the  
8 numbers of those. I've read them but I don't know their  
9 numbers.

10          MR. MOORE: The Motion for Change of Venue is not on  
11 my list. I don't know why it didn't make it on. That's  
12 because it's not a death-penalty motion.

13          MR. McMASTER: It's one of those non-death-penalty  
14 motions that were filed by Defense.

15          MR. MOORE: And I thought while we're on the subject  
16 I could raise. And I have my copy if the Court would  
17 like to look at it.

18          THE COURT: I don't think I was -- I have the list  
19 of the --

20          MR. McMASTER: I have a copy of the motion, Judge, I  
21 can make a copy for the Court.

22          THE COURT: I was going to say, I don't have a -- I  
23 was only prepared on these 46 and the State's three. Do  
24 you need an extra copy?

25          MR. MOORE: I don't.

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1 THE COURT: Okay. Mr. McMaster, I think he's given  
2 me. Oh, they're saying that they are in here.

3 Okay. I do have the Motion for Change of Venue. I  
4 apologize. It's Number 41.

5 MR. MOORE: Right.

6 THE COURT: Okay. So, I have a copy of it, I can  
7 give this back to you. Wouldn't want you not to have a  
8 copy. I'm sure you have one somewhere.

9 Okay. It's Number 41.

10 MR. MOORE: May I proceed?

11 THE COURT: Yes, you may.

12 MR. MOORE: First of all, it doesn't comply with the  
13 Rule 3.240, which requires an affidavit by the movant,  
14 which would be Mr. Bradley, but also by two other  
15 individuals who would be leaders of the community, who  
16 can attest that because of the extensive media coverage,  
17 the Defendant in their opinion could not get a fair  
18 trial.

19 And I didn't supply those because although I've  
20 contacted numerous people who are both in the legal  
21 community and outside the legal community, who I believe  
22 could easily be described as leaders of the community  
23 and knowledgeable about the media coverage, they were  
24 not willing to provide affidavits.

25 And not because they didn't believe that there  
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1 could be a problem with a fair trial because of the  
2 media coverage, but because they just didn't want an  
3 affidavit with their name on it in this case file.

4 So, that's why I haven't been able to comply with  
5 it, the Rule, the technical requirements of the Rule.  
6 However, I'm making the Court aware we have something of  
7 that anybody who reads the newspaper or watches TV,  
8 could escape from being aware of, which is the extensive  
9 media coverage by this case, of this case.

10 And the fact that we have not been able to comply  
11 with a technical requirement of the Rule would not  
12 foreclose us from moving for a change of venue if we  
13 cannot because of the media coverage seat a fair and  
14 untainted jury in this jurisdiction.

15 So, merely to comply with the requirement that I  
16 filed the motion pretrial, which is what the Rule says,  
17 it's got to be filed pretrial, but the fact that I can't  
18 file it in the precise form that the Rule requires,  
19 through no fault of my own, should not be an impediment  
20 to the Court if we reach the point where we can't seat a  
21 jury, of considering moving the venue to another  
22 location where we can hopefully seat a jury that's not  
23 been tainted or affected by the media coverage.

24 So, I think what I'm saying here is, I want the  
25 Court to be aware of it, the motion's still on the  
RYAN REPORTING

1 table, but as even if we provided experts' testimony and  
2 all the affidavits, I do believe that with the State  
3 objecting, and the last time I talked to Mr. McMaster  
4 the State was objecting to changing the venue, that it  
5 would be appropriate. And probably the only way the  
6 Court could rule on that is if we tried to seat a jury,  
7 and then reached a point where we couldn't or decided we  
8 couldn't seat one because of the media coverage.

9 So, I'm asking the Court to be aware of the motion,  
10 aware of the potential problem -- I'm sure the Court  
11 already is -- and to reserve ruling on the motion, is  
12 all I'm asking at this time.

13 THE COURT: Response from the State.

14 MR. McMASTER: I think that's an acceptable  
15 procedure, Judge, and perhaps later he'll be able to  
16 comply with the technical requirements of the Rule.

17 MR. MOORE: I don't expect that to change.

18 THE COURT: Okay. I'll note for the record that the  
19 affidavits have not been filed. I'll note the argument  
20 by the Defense, and I'll reserve ruling.

21 I think the other motion is Number 33.

22 MR. McMASTER: That's correct.

23 THE COURT: Motion to Sequester the Jury. Mr.  
24 Moore, you may proceed.

25 MR. MOORE: Well, it's related in the sense that in  
RYAN REPORTING



1 the past the case has generated much media coverage, and  
2 it will during the course of the trial. And my concern  
3 is because of the length of the trial, the potential  
4 exposure of jurors, even though they're instructed not  
5 to pay attention to media coverage, that they will be  
6 exposed to it and be affected by it unless they are  
7 sequestered.

8 I know that's a huge burden on the jurors, but  
9 however, if it turns out that the media coverage is what  
10 I expect it to be, and that's a reasonable assumption,  
11 and the potential being great for exposure to that media  
12 coverage, if that comes to fruition and the people  
13 sitting on the jury are exposed to media coverage and  
14 are affected by it in any way, then the entire trial is  
15 a waste of time.

16 And so, the only way to prevent that and from  
17 having to go through this trial a second time, would be  
18 to sequester the jury from the time they're seated.

19 THE COURT: Mr. Moore, my observation and the  
20 information that's been provided to me, is that the  
21 coverage with regard to this case has been local only.

22 MR. MOORE: It's been national.

23 THE COURT: I'm not aware of any national coverage,  
24 I'm not aware of any request made to our Court  
25 Administration by any national news organizations. Just  
RYAN REPORTING

1 so you know.

2 So, are you aware of any national news coverage?

3 MR. MOORE: Well, I am, because there was a --  
4 what's the word -- there was a recognition of fallen  
5 officers in Washington, D.C., at which President Obama  
6 spoke, and he listed about five officers who had lost  
7 their lives in the line of duty, and listed Deputy  
8 Barbara Pill as one of them. And it was televised  
9 nationally and it got quite a bit of local coverage when  
10 the local feeds picked up on it because of the ties with  
11 the local community.

12 And so, there has been, on the basis of that,  
13 national coverage. And of course, as the Court is  
14 aware, there's been extensive statewide and an ever  
15 greater amount in Brevard county, on at least a weekly -  
16 -

17 THE COURT: When you say statewide, other than the  
18 news that covers Brevard County, who also covers the  
19 adjoining counties --

20 MR. MOORE: Talking about Orlando, Orange County and  
21 whoever is within the broadcasting radius of Channel 9,  
22 Channel 13 and Channel 2 --

23 THE COURT: Okay. I just want to make sure --

24 MR. MOORE: -- which is Central Florida and beyond.

25 THE COURT: Okay. Central Florida coverage I would  
RYAN REPORTING

1 agree with.

2 MR. MOORE: Right. And so, do I have precise dates  
3 and do I have affidavits from people from Pensacola or  
4 Tampa, even, who have heard and are aware of these  
5 things? I don't have that. But I think one can  
6 reasonably surmise that it is extended at least across  
7 Central Florida.

8 And so, anybody who is in this area and on a  
9 regular basis in the newspapers, at one point it was  
10 daily just about, weekly for some stretches of time, and  
11 regularly. And so, that coverage I expect will continue  
12 during the course of the trial. And the risk of jurors  
13 being exposed to that will continue during the course of  
14 the trial.

15 And despite the admonitions and instructions from  
16 the Court, if you're living in a world in which there is  
17 this flow of media coverage, which will pick up as we  
18 get closer to trial, then there is an increased,  
19 proportionately increased risk of exposure to the media  
20 coverage and potential risk of taint to the jury.

21 And so, that's my concern, and I think the only  
22 way to assure that that will not happen, is to sequester  
23 the jury in the course of the trial. Once they're  
24 seated, sequester them.

25 THE COURT: Hear response from the State.  
RYAN REPORTING

1 MR. BROWN: Judge, at this time, the State's  
2 position is we don't feel that's necessary.

3 The coverage in this case I would put as equivalent  
4 to other heavily-profiled cases that we've done in this  
5 county. Those have been successfully done without  
6 sequestering the jury.

7 Mr. Moore and I did a case, I think he was on it or  
8 maybe he got off it at the end, I don't recall, but  
9 triple homicide in Titusville, including the shooting of  
10 a five-year-old girl, and that was on the news everyday.  
11 The media covered every step of that trial. It was on  
12 every local broadcast. The jury was not sequestered  
13 during that trial nor in the penalty phase of it, and it  
14 was not a problem.

15 The Court gave the jury instructions daily. We  
16 addressed that issue on a daily basis. Told them what  
17 news broadcasts were here, to avoid it at all cost. And  
18 the jury followed the Court's order. And that same  
19 procedure's been done in a number of other cases that  
20 would have similar type of coverage that we have here.

21 People point to the Casey Anthony case. Obviously  
22 that trial and that case, I would submit to the Court,  
23 had a great deal more media attention than this case has  
24 had or any other case we've had in the county. And in  
25 fact, that case they went out -- the jury was picked I

1 believe from St. Petersburg, brought to Orlando for the  
2 trial. They were sequestered there, but the only other  
3 option would have been having them drive back and forth  
4 from St. Pete to Orlando everyday. So, that would not  
5 have been feasible.

6 MR. MOORE: Which case was that?

7 MR. BROWN: Casey Anthony case.

8 So, Judge, our position in this case is we don't  
9 think it's necessary. It's entirely within the Court's  
10 discretion. There are times, obviously when they're  
11 deliberating that unless it's waived, the Court has to  
12 sequester them. But other than that, we don't feel it's  
13 necessary, but it is entirely within the Court's  
14 discretion.

15 MR. MOORE: And Judge, neither of those cases  
16 involve the death of a police officer. And the last  
17 case that I can recall high profile, and they all are  
18 involving deaths of police officers, is the William  
19 Cruse case in the early nineties. And that was moved to  
20 Bartow, Florida. That was moved to the other side of  
21 the state because of the publicity.

22 So, it's a different type of case, different breed  
23 of case. It has a different reaction from the community  
24 that's aware of a case when there is an officer who has  
25 died.



1 which would be Number 20.

2 THE COURT: Yes, sir.

3 MR. MOORE: And if time permitting, we'll move on.  
4 So, Number 20 would be Motion for Disclosure of  
5 Impeaching Information. This is a Brady request, and  
6 it's sort of related to an earlier motion but with more  
7 specificity.

8 What I'm getting at is, there are numerous  
9 witnesses on the list provided by the State who would  
10 not be -- I mean, euphemistically described as non-law-  
11 abiding citizens, who are in and out of trouble, and I  
12 can't keep track, not as well as the State can, of the  
13 problems that they've gotten into and the potential for  
14 fair resolutions or favorable resolutions for their  
15 cooperation in this case.

16 I can think of about half a dozen right offhand.  
17 And what I'm asking is, if the State knows of situations  
18 where -- and again, this is within the knowledge and  
19 control, even if it's (Inaudible - sneezing in mic) of  
20 the State, of discussions that are had with these  
21 individuals who are on the State's witness list, who  
22 will be testifying in this case, that they will be  
23 considered for some favorable consideration in their  
24 respective cases, their legal cases.

25 So, that's what I'm addressing in this motion. And  
RYAN REPORTING

1 I'm thinking from a Prosecutor's standpoint, you know, I  
2 can't think like one because I've never been one, but  
3 they are focusing on other things than that.

4 But I just want to expand their awareness, if they  
5 have awareness, of any situations like the ones I've  
6 described where these individuals who are going to be  
7 testifying have gotten -- at least it's been implied to  
8 them that -- and more specifically, if they've been  
9 offered any type of favorable resolution in their cases  
10 for their testimony, that we need to know about that.

11 And I'm asking the Court to grant the motion, enter  
12 an Order that if the State has that knowledge, that they  
13 provide it to us.

14 THE COURT: Your motion's kind of directed towards  
15 other things, but what you're really requesting is that  
16 specific information.

17 MR. MOORE: Well, I think that's pretty much what  
18 I'm asking for.

19 THE COURT: I don't know where that beep's coming  
20 from, but it needs to stop.

21 MR. MOORE: In my first paragraph, the substance of  
22 any statements, agreements, offers and discussions had  
23 with witnesses or suggestions of lenience, compensation,  
24 assurance not to prosecute, assurance to proceed only on  
25 certain causes. So, that's sort of another way of



1           stating what I'm asking.

2           THE COURT: Okay. Response from the State.

3           MR. McMASTER: With respect to Paragraph Number 1,  
4 with respect to witnesses that will be testifying at  
5 trial, the State has no objection. If there are any  
6 agreements, we will be turning those over to the  
7 Defense.

8           THE COURT: Okay. So, I'll grant the motion, and  
9 will make the Order specific as to Paragraph Number 1.

10          MR. McMASTER: Paragraph Number 2 is partially  
11 restating Paragraph Number 1, and goes on to any types  
12 of consideration. I think that's a bit over-broad  
13 there.

14          They're talking about assistance or favorable  
15 treatment with respect to any criminal, civil, tax court  
16 or administrative dispute with Plaintiff. Not quite  
17 sure what they mean there. And anything else which  
18 could arguably create an interest or bias in the witness  
19 in favor of the State or against the Defense or act as  
20 an inducement to testify or to color testimony.

21          Judge, the State's aware of its obligations under  
22 Brady and Oggers (Phonetic) and Nafu (Phonetic) and the  
23 other cases. If we have any information regarding  
24 witnesses who are going to testify, we will in fact turn  
25 that information over.

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1 I think a number of the things that they're asking  
2 for go far beyond what we have the ability to know  
3 about. In particular, Number 6, they're asking for any  
4 and all personal files. I assume they mean personnel  
5 files. I don't believe that's something that is  
6 obligated by the State to turn over for its witnesses.  
7 They have as much access to witness personnel files as  
8 we do.

9 And records regarding prior misconduct or bad acts  
10 committed by the witnesses. If it's in our possession  
11 and we have records relating to something that would  
12 qualify as impeachment material, we'll certainly turn it  
13 over.

14 With respect to felony convictions attributed to  
15 the witness, if the witness is going to testify, we will  
16 be checking for criminal histories. We will provide  
17 counsel with the criminal history information with  
18 respect to convictions and any pending prosecutions that  
19 the State's aware of.

20 So, within the guidelines delineated in the State  
21 of Florida and United States Supreme Court about the  
22 requirement for the State to disclose this type of  
23 information, we're certainly willing to comply.

24 THE COURT: Okay. Mr. Moore, my intention is to  
25 grant it with regard to any Brady material, and also  
RYAN REPORTING

1 with regard to specifically Paragraph Number 1 and  
2 Paragraph Number 4.

3 I think that will cover that. Do you wish to be  
4 heard?

5 MR. MOORE: Well, whatever the State has and what it  
6 knows. That's what I'm asking for. I'm not asking for  
7 them to go out and do our leg work. But they know of  
8 some consideration that some witness has gotten  
9 somewhere in any way related to his testimony, then that  
10 -- they know it, and at least they have the knowledge,  
11 then they need to make us aware of that. And I think  
12 Mr. McMaster just said he would comply with that.

13 So, if the Court wants to put it in terms of Brady  
14 evidence, then that would be sufficient, I believe.

15 THE COURT: Okay. I'll make it with regard to Brady  
16 material and with regard to 1 and 4.

17 Okay. It looks like it's almost 5:30. It is 5:30  
18 on my watch. So, 21 and the rest we'll hear at 3:00  
19 o'clock on the 21st. Excluding we've already addressed,  
20 on my list, Number 41 and Number 43. And then, Mr.  
21 McMaster, yours was Number 47, 48, 49 and 50. So, we'll  
22 address those then, and then we'll see what we need to  
23 address further from there.

24 MR. McMASTER: Yes, ma'am.

25 THE COURT: Okay. So, court will be in recess until  
RYAN REPORTING

1 the 21st at 3:00 p.m.

2 Thank you.

3 \* \* \* \* \*

4 (The audio proceedings were concluded at 5:31 p.m.)

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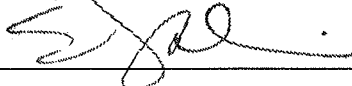
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STATE OF FLORIDA )  
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DATED this 4th day of June, 2014.



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State v Bradley

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