

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**

TRANSCRIPT OF DIGITALLY RECORDED  
MOTIONS HEARING

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The transcript of the Digitally Recorded  
Motion Hearing held in the above-styled cause  
at the Moore Justice Center, 2825 Judge Fran Jamieson  
Way, Viera, Florida, on the 21st day of January, 2014,  
commencing at 3:16 p.m., before the Honorable  
Morgan Reinman.

Case # 05-2012-CF-035337-AXXX-XX  
Document Page # 432



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A P P E A R A N C E S

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Appearing for the  
Plaintiff

RANDALL MOORE, ESQUIRE  
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Appearing for the  
Defendant

Brandon Bradley, Defendant, present

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

1  
2 THE COURT: We can go on the record in the case of  
3 the State of Florida versus Brandon Lee Bradley. This  
4 is case number 12-CF-35337.

5 I did issue an Order from last week's -- from the  
6 motions that were heard on January 16, 2014. I assume  
7 everyone's received a copy of that order; is that  
8 correct?

9 MR. MOORE: I did.

10 MR. McMASTER: That's correct, Judge.

11 MR. MOORE: We did.

12 THE COURT: The only other thing I wanted to point  
13 out from the prior Order that I entered, that I did add  
14 a date, and I wanted to make sure everyone knew that  
15 date. I added a date of non-death-penalty motions to be  
16 heard on February 20th, 2014, at 3:00 p.m. So, I added  
17 that date, so I wanted to make sure everyone was aware  
18 of that date.

19 Also, I will do a pretrial conference at that date,  
20 as well. My pretrial conferences probably be 15 to 30  
21 minutes.

22 MR. MOORE: There will be a calendar call tomorrow?

23 THE COURT: There is a calendar call tomorrow, but I  
24 would assume he's not on that. I'm not sure.

25 MR. MOORE: Well, I had that for him, but then since  
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1 we -- that was before the trial got moved, so I assume  
2 we would not have one for Mr. Bradley tomorrow.

3 THE COURT: I did cancel it when the trial got  
4 moved. With all due respect, we don't have to do a  
5 calendar call on him. So, he doesn't have to come to  
6 the one on -- I mean, this is set for February the 24th,  
7 and there's a calendar call before that. He doesn't  
8 need to be calendared for that calendar call and we  
9 don't need to have that calendar call. That's only to  
10 make sure what cases are going and what cases aren't and  
11 what week they want, and we know all that information  
12 with regard to Mr. Bradley, so we don't need to do a  
13 calendar call.

14 Okay. I just wanted to clarify that and make sure  
15 everybody was aware of that.

16 Unless you all want to proceed another way, it  
17 looks like we're on Number 21.

18 MR. MOORE: Right. Before we do that, Ms. Kerchner  
19 is going to enter a plea on January 23rd, as I  
20 understand it, at 3:00 p.m. --

21 THE COURT: Yes, sir.

22 MR. MOORE: -- Thursday. And I asked the Court to  
23 enter an Order to hold her here so that as soon as  
24 that's done, we can take her deposition. And I've  
25 already cleared it with her lawyer, and there's no

1     impediment from his point of view.  So, I'd ask the  
2     Court to enter an Order that instead of being rushed  
3     back to Orange County jail, which as I understand where  
4     she is now, she be kept here until we finish her depo.

5           THE COURT: That she'll be kept here in Brevard  
6     County?

7           MR. MOORE: Well, here at the courthouse so we can  
8     take her deposition.  Otherwise we've got to go over  
9     there to do it.  I've lined up a court reporter and --

10          THE COURT: Do you know the date for that?

11          MR. MOORE: The 23rd, January.

12          THE COURT: So, it is right after she takes her  
13     plea?

14          MR. MOORE: Yes.

15          THE COURT: Okay.  I just wanted to say, I don't  
16     know what the issues are, but I know there was something  
17     with regard to the Brevard County jail.  So, that will  
18     be fine.  Once she enters the plea, I'll order that she  
19     remain until her deposition can be taken on that date.  
20     Okay?

21          MR. MOORE: Thank you.  Do you want me to submit an  
22     Order?  I can do that.

23          THE COURT: No, I can remember.  Mr. McMaster won't  
24     let me forget.  And I'm writing it down.

25          MR. MOORE: I'm not implying anything, Judge.

1 THE COURT: If I write it down normally we're good  
2 to go. If I don't write it down you might not be good  
3 to go.

4 Okay. Hold on just a minute.

5 MR. MOORE: Sure.

6 THE COURT: Okay. Are we ready to go with Number  
7 21?

8 MR. MOORE: Yes, ma'am.

9 THE COURT: Okay. You may proceed.

10 MR. MOORE: Number 21, Motion for Individual  
11 Sequestered Voir Dire. What I'm asking, Your Honor, is  
12 that after the preliminary questioning where the jurors  
13 are asked about scheduling conflicts and those sorts of  
14 things, their qualifications to sit on the jury, and  
15 then after those people are removed, then before we get  
16 into the general voir dire, that we do individual  
17 sequestered voir dire on the issues of death penalty and  
18 media exposure.

19 And what I'm asking specifically is that both that  
20 we do individuals on all of the death-penalty  
21 questioning individually and all of the media  
22 questioning individually, whether they raise their hands  
23 or not.

24 And as I see it, if it's tagged on, if the media  
25 questioning is tagged on to the death questioning, then

1 there's no down side to doing it that way because  
2 they'll say -- I think they'll be more forthcoming if we  
3 can do it that way. But if they say, no, we haven't  
4 read anything about it, which I can't imagine that  
5 anybody who's lived in Brevard County for the last year  
6 and a half and who is capable of reading, has not, if  
7 they say no, then we move on. We don't spend anymore  
8 time on it than we would in here.

9 And as to the death qualification, Your Honor,  
10 there is a precedent for, as the Court knows, Judge  
11 Griesbaum in the Warren case did it about two years ago,  
12 and he's going to be doing it in the Peak case in May.  
13 And Judge Crawford is going to be doing individual  
14 sequestered voir dire on death penalty and media  
15 exposure on the Anthony Welch case, which I don't know  
16 that that's been set, but he's indicated he would do  
17 that.

18 The reason for it is based on a California Supreme  
19 Court case, Hovey, H O V E Y, which I cited in my  
20 motion. And in that case it was introduced into  
21 evidence where several, probably 70 or 80, research  
22 papers that determined the effect of death-qualifying  
23 juries in death-penalty cases. And two conclusions were  
24 reached.

25 One, that jurors who go through that process are  
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1 more inclined to convict. And number two, they're more  
2 prone to impose a death sentence.

3 And on the basis of that, the California Court  
4 entered an Order that not as a matter of constitutional  
5 law, but as a matter of procedure, that the California  
6 Criminal Procedure would adopt an individual sequestered  
7 voir dire on those matters in death-penalty cases.

8 That subsequently was voted down by the voters of  
9 California, but it's still discretionary there. And in  
10 Florida it's discretionary with the Court.

11 It will not add any more time, it will not unduly  
12 or significantly expand the time that we spend or the  
13 energy that we spend on this trial. I've done it and  
14 other judges have done it, and they are willing to do it  
15 again, those who've done it.

16 And frankly, Judge, we are at -- haven't even  
17 reached the two-year mark of the age of this case, which  
18 is unusual for a case of this complexity. It's complex  
19 from our side, from the Defense side. It's challenging  
20 from our side.

21 And I have in my goal of trying this case before I  
22 leave the employ of the Public Defender's Office, I have  
23 taken a hard long look at what we need to do in this  
24 case, not necessarily what we could do, what's possible,  
25 what can be done. If all we did, if we expanded our



1 efforts to include what could be done, what we can do,  
2 we could justify another year-and-a-half working on this  
3 case.

4 And I'm talking about getting ready for trial  
5 without compromising our competence, our trial  
6 preparation, without cutting any corners, which will  
7 make us less able to defend our client.

8 And so, we're not cutting any corners, but I am  
9 focusing on what we need to do to be ready for trial.  
10 We have moved up a time line on this case significantly,  
11 probably a year or year-and-a-half before it would  
12 otherwise be ready. And so, if the Court's concerned,  
13 if the State expresses a concern that individual  
14 sequestered voir dire might add a few days, two or three  
15 days, which I doubt, then in the big picture, it's not a  
16 valid argument.

17 So, if we know from the empirical research in this  
18 case, which is accepted by the Supreme Court of  
19 California, that such a voir dire procedure is done  
20 individually and sequestered produces a more fair jury,  
21 a jury that's more apt to reach a verdict and a  
22 sentencing recommendation if we get to that, based upon  
23 the evidence and the law and not on extraneous things  
24 like the actual group jury selection process, which is  
25 more likely to produce a conviction-prone jury, then why

1 not employ that.

2 And so, I'm asking the Court to permit us in a  
3 sequestered fashion to question individual jury members  
4 on their feelings about the death penalty and on media  
5 exposure.

6 And I might want also add a question, something to  
7 the effect that, is there any reason you can think of  
8 why you cannot sit and be fair and impartial in this  
9 trial.

10 Judge, I wouldn't expect that to lead to extensive  
11 discussion, but it might produce answers that we don't  
12 want a group to hear.

13 And so, that's what I'm proposing, that's what I'm  
14 requesting.

15 THE COURT: Hear response from the State.

16 MR. McMASTER: As Mr. Moore indicated, it is  
17 discretionary with the Court.

18 It would be the State's position that with respect  
19 to the media coverage and individuals' knowledge about  
20 the media coverage, that would probably be best done  
21 individually and sequestered one at a time, so as not to  
22 expose the jurors who have not heard or been exposed to  
23 the media coverage to what the other jurors have been.

24 With respect to the death-penalty qualification, I  
25 believe it's a bit premature to agree to an individual

1 and sequestered voir dire of them regarding the death  
2 penalty.

3 The cases that I've been involved in have been done  
4 with the jurors as a whole. I thought it went very  
5 smoothly in that way because to do it individually  
6 you're going to end up repeating the same questions to  
7 each individual juror over and over again. Whereas, if  
8 you're doing it to the group, only those who would be  
9 affected by a particular answer would be responding.  
10 And their answers when given can open up the discussion  
11 with the other jurors about their feelings. I think  
12 it's more inclined to get the jurors talking about, be  
13 it the death penalty than the other way around.

14 So, having said that, once again, it is  
15 discretionary with the Court.

16 As for the time line of pushing this case where  
17 they could justify another year-and-a-half so of  
18 investigations, that was precisely the State's concern  
19 when we discussed this last week at the motion hearings,  
20 and discussed our concerns about the Defense wished to  
21 go forward as speedy as they did.

22 And I don't know that you can take time off of one  
23 side of that and try to add it on to the other to  
24 justify doing individual voir dire. They need time to  
25 prepare, they need time to prepare.

1 MR. MOORE: I'm not asking for time to prepare. I'm  
2 saying, I have focused exclusively on this case because  
3 of the other 16 or so cases that we have, half of which  
4 are death-penalty cases, those have been absorbed by the  
5 other members of the capital division, so I've had the  
6 luxury of being able to focus exclusively on this case.

7 I haven't cut any corners. I don't want to  
8 compromise my client's right to a fair trial and the  
9 best legal representation we can provide. That's been  
10 my goal for the last 30 years. I'm not about to cut any  
11 corners.

12 But however, I do want to see this case tried  
13 before I leave, without compromising my client or his  
14 right to a fair trial.

15 My concern with the jury selection process in a  
16 group is that having tried several of those, there is a  
17 tendency for people to adopt answers that are given by  
18 other members of the group, and not to respond, because  
19 it's easier to do that, frankly, than to admit that they  
20 may not be fair or they may be biased in some way. I've  
21 seen it.

22 And so, I feel that the jurors or venire persons  
23 are more comfortable in a less social setting where it's  
24 more relaxed, for one thing, and they're not exposed to  
25 continual repeated questioning of the entire venire,

1 which according to surveys that were adopted in the  
2 Hovey case, it tends to infer and imply to the other  
3 venire members that because the experts in the court,  
4 the defense attorneys, the judge, the prosecutors, who  
5 the jurors tend to look up to, since they're spending so  
6 much time talking about death penalty, that they must  
7 somehow believe that the Defendant is guilty. And that  
8 was demonstrated in the academic surveys that were the  
9 under pending of the Hovey case.

10 And the conclusion was, for all of those reasons,  
11 that the best way to arrive at a jury that's not  
12 affected by those factors, is to do individual  
13 sequestered voir dire.

14 And if that is a way, which it's been empirically  
15 demonstrated, why not do it. If we all know that that  
16 is the effect of doing the jury selection that way. I  
17 mean, that's what these academics, the conclusion they  
18 drew. And they're not associated with anybody; nobody  
19 hired them to do that. It wasn't like they were  
20 preparing these research papers for litigation. They  
21 just did the research, and it was adopted by the  
22 attorneys in making their argument, which persuaded the  
23 California Supreme Court.

24 And so, I only bring that up not to say that I'm  
25 speeding into this and I'm cutting corners and damn the

1 torpedoes, I'm saying we've done all that we necessarily  
2 have to do, I believe, and can be ready and be competent  
3 and effective, hopefully, through our preparation, which  
4 I believe has been thorough, to begin this case on  
5 February the 24th. And for that reason, because we have  
6 spent less time in the big picture preparing this, that  
7 an argument that time is a factor, should not be a  
8 factor that's going to unnecessarily prolong this case,  
9 because it won't.

10 I mean, the attorneys that I've talked to and the  
11 judges that have done it this way, have found that it  
12 works, and it does not unduly prolong the case.

13 MR. McMASTER: Judge, in the Patrick Warren case, we  
14 picked a death-qualified jury individually in a little  
15 over four days.

16 THE COURT: Okay.

17 MR. McMASTER: We actually picked the jury in less  
18 than a week.

19 MR. MOORE: There's another aspect of it, and that  
20 is the fact of a death of a police officer is recognized  
21 as being a different breed of homicide. And it is the  
22 subject of an aggravating circumstance.

23 And with the intense publicity that this case has  
24 generated and that factor of the case being carved out  
25 and specifically recognized as holding it in a different

1 category of homicide than other homicides because of  
2 that fact, I mean, it would require a delicate handling  
3 of these issues, which could best be done in private  
4 with these individuals. And we are more likely to get  
5 at their true feelings about these matters if we can do  
6 it in the fashion that I'm requesting.

7 I don't mean to be blunt, but this isn't your  
8 garden-variety case. There are many factors about it  
9 which set it apart, and it needs to be handled in an  
10 unusually sensitive manner, in my view, and the best way  
11 to do that is through the individual sequestered voir  
12 dire.

13 THE COURT: Okay. The Court will deny as it  
14 pertains to the discussion of the death penalty with the  
15 entire panel. I will grant as to individual voir dire  
16 of the potential jurors as to the prior knowledge of the  
17 case. But I will add at that time a general question as  
18 to any other reason why you feel that you can't serve.

19 I have a general question that I normally ask at  
20 the end of voir dire. I will ask that at that time. I  
21 will ask that kind of open-ended, all-inclusive reason  
22 why. I'll ask that as to the individual voir dire when  
23 I ask about prior knowledge of the case. And that would  
24 happen at the end, because they'd already have the  
25 benefit of the other discussion.

1           Okay. Number 22.

2           MR. MOORE: Motion in Limine and to Strike Portions  
3 of the Florida Standard Jury Instructions in Criminal  
4 Cases, citing Caldwell versus Mississippi.

5           MR. McMASTER: That's 23.

6           THE COURT: 22. I enumerated Mitigating Factors.

7           MR. MOORE: That's 23.

8           THE COURT: I have that as 22.

9           MR. McMASTER: So do I. I believe it's a repeat of  
10 Number 19, which we did last week.

11           MR. MOORE: Well, 23 and 28 and 19 should be  
12 considered together, but there's some additional factors  
13 in this.

14           And what I'm getting at is --

15           THE COURT: Are we all on the same thing?

16           MR. MOORE: Well --

17           MR. McMASTER: I'm hoping.

18           MR. MOORE: Does the Court have a copy of the motion  
19 that I'm referring to; the one that says, read Caldwell  
20 versus Mississippi at the bottom, bottom line?

21           MR. McMASTER: That's 23.

22           THE COURT: That's Number 23.

23           MR. MOORE: Right.

24           THE COURT: Yes, sir.

25           MR. MOORE: Okay. So, the previous ones were  
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1 attacking the constitutionality.

2 THE COURT: Thought the previous one was a motion in  
3 reference to non-enumerated mitigating factors, and I  
4 think Mr. --

5 MR. MOORE: No.

6 THE COURT: -- Mr. McMaster already agreed to that.

7 MR. MOORE: No, he -- well, no, he didn't agree to  
8 that.

9 MR. McMASTER: It's on 22.

10 MR. MOORE: We did this last week.

11 MR. McMASTER: No, it was Number 19, Motion in  
12 Limine Regarding the Procedures. You had it -- the first  
13 one was the catchall provision that you didn't want us  
14 referring to.

15 MR. MOORE: I remember arguing that, but --

16 MR. McMASTER: Because it was part of your Number 19  
17 motion, the Motion in Limine in Re: Procedures.

18 And to make things easy on Number 22, Judge, I  
19 believe Mr. Brown stated our position last week, that we  
20 do not refer to any of the mitigating circumstances as  
21 either statutory or non-statutory. They just would be  
22 referred to in front of the jury as mitigating  
23 circumstances.

24 THE COURT: If Mr. Moore will accept that, that  
25 would be -- I would grant that.

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1 MR. MOORE: Yeah, I think we're talking about  
2 different motions, though. Because we may have revised  
3 this list.

4 But the motion, the subject of this motion that I'm  
5 doing now, we have not done, and we're asking --

6 THE COURT: Which one are you doing; the Number 22  
7 or Number 23?

8 MR. MOORE: All right. 22 is a Motion in Limine  
9 Regarding Reference to Non-Enumerated Mitigating  
10 Factors.

11 Okay. Maybe I flipped that over too fast. I did.

12 THE COURT: I think that it talks about in your  
13 motion --

14 MR. MOORE: Right, right, right.

15 THE COURT: Okay.

16 MR. MOORE: Just no reference to mitigating factors  
17 as being a catchall or non-statutory. We don't normally  
18 run into that, but I don't want to take any chances, and  
19 I want a ruling on that. That nobody will refer to it;  
20 State Attorneys won't, Judge won't refer to non-  
21 statutory mitigating circumstances as either catchall or  
22 non-statutory.

23 THE COURT: Mr. McMaster.

24 MR. McMASTER: Judge, as far as the State goes, we  
25 don't have any objection to that motion. I believe Mr.

1 Brown indicated that last week as part of the Number 19  
2 motion.

3 THE COURT: Okay. Then Motion Number 22 will be  
4 granted.

5 MR. MOORE: All right. Now, 23.

6 THE COURT: Yes, sir.

7 MR. MOORE: Motion in Limine to Strike Portions of  
8 Florida Standard Jury Instructions in Criminal Cases,  
9 Re: Caldwell versus Mississippi. And there are specific  
10 aspects of it, of the standard instruction, which I'm  
11 asking the Court to strike and revise.

12 And specifically, they would be the use of the  
13 words "advisory" recommendation that the jury is  
14 advising, because it diminishes he responsibility of the  
15 jurors under Caldwell. And I will submit a proposed  
16 instruction during the charging conference which  
17 reflects those requested changes, which substitute the  
18 word -- well, will take those words out, "advisory" and  
19 "advise", and will -- the proposed instruction which I  
20 don't have now, will address that.

21 Asking that the instruction be revised so that the  
22 jury's instructed that aggravating circumstances would  
23 have to weigh mitigating circumstances, which is -- the  
24 standard instruction has the jury finding mitigating  
25 circumstances outweighing aggravating circumstances,

1 puts a burden on the Defense, and it should be on the  
2 State, which is a due process violation.

3 Also, although the instruction says that the  
4 recommendation of the jury as to sentence must be given  
5 great weight, in deference by the Court, the jury's not  
6 also told that the Court can deviate from the jury's  
7 determination only if wholly unreasonable. And that's  
8 Mills versus Moore at 786 So.2d 532.

9 So, we'd ask -- and Courts are permitted to make  
10 changes in a standard instruction to reflect the case  
11 law. And if that's the case law, then it would be  
12 discretionary with this Court and appropriate for the  
13 Court to adopt that language in Mills versus Moore, that  
14 the recommendation by the jury can be disregarded only  
15 if wholly unreasonable.

16 So, we'd ask that the Court make those changes in  
17 the instructions, and I'm objecting to the standard  
18 instructions which misstate in terms of what the law  
19 provides, those portions that I have just made reference  
20 to, and I will submit a proposed instruction to the  
21 Court at the appropriate time, which will be during the  
22 charging conference, for the Court to rule on.

23 THE COURT: Hear response from the State.

24 MR. McMASTER: Judge, as we indicated last week, the  
25 recent case of Foster versus State, the Supreme Court of  
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1 Florida opinion dated October 17th of 2013, on Page 27  
2 of the printed opinion, the quote is "The standard  
3 penalty phase jury instructions fully advise the jury of  
4 the importance of its role, correctly state the law, do  
5 not denigrate the role of the jury and do not violate  
6 Caldwell versus Mississippi."

7 I'd suggest that Number 23 be denied.

8 THE COURT: Okay. Motion Number 23 is denied.

9 MR. MOORE: Motion Number 24, Motion for  
10 Interrogatory Penalty Phase Verdict.

11 And of course, we discussed Steele last week, which  
12 says that a special interrogatory verdict at the penalty  
13 phase would be inappropriate. But however, I would ask  
14 the Court to take into consideration Justice Parenti's  
15 concurring opinion in the case that I've cited, Aguirre-  
16 Jarquin, that's A G U I R R E, hyphen, J A R Q U I N,  
17 versus State, Florida Supreme Court case from 2009,  
18 found at 9 So.3rd 953, and specifically at -- well, it's  
19 Justice Parenti's concurring opinion.

20 And the issue is whether a Trial Court should be  
21 permitted to give a special interrogatory verdict to a  
22 jury at the penalty phase where the jury's asked to give  
23 the number of votes for each aggravating circumstance  
24 for and against, and do the same with mitigating  
25 circumstances. And her reasoning is this, and let me

1 quote it, it's brief.

2 Justice Parenti says, "I agree with the majority's  
3 affirmance of the convictions and sentence of death. I  
4 write to address the difficulties created by our failure  
5 to allow or mandate special interrogatories in death  
6 penalty cases, as more fully explained in my separate  
7 opinions in," and she gives cites for other previous  
8 cases where she has cited this opinion.

9 And reiterated in LeBron, which is one of those  
10 cases, "The use of special verdict forms would enable  
11 this Court to tell when a jury has unanimously found a  
12 death-qualifying aggravating circumstance, which would  
13 both facilitate our proportionality review and satisfy  
14 the constitutional guarantee of trial by jury even where  
15 the recommendation of death is less than unanimous."

16 So, it guides the Trial Court in doing that and  
17 allowing the jury to say exactly what they found,  
18 because we have 15 aggravating circumstances, and I  
19 could guess at some of but of course not all of the  
20 aggravating circumstances in this case. But it's  
21 conceivable that a few jurors could find some and a few  
22 others could find others, and it could hardly be said  
23 that the finding of the aggravating circumstances in any  
24 penalty phase case are beyond a reasonable doubt because  
25 of the structure. There is no way to review that.

1 There is no guidance given to the Court as to how much  
2 weight to give to a jury's recommendation other than  
3 great weight.

4 On the other hand, if the Court could see what  
5 precise aggravating circumstances were found and how  
6 many of the jurors found them. And similarly, the same  
7 analysis applied to mitigating circumstances; exactly  
8 which mitigating circumstances were found and by what  
9 vote, the Trial Court would be guided in helping the  
10 Court to arrive at the ultimate sentence. And the  
11 Appellate Court will be guided, as well, in  
12 proportionality review.

13 And so, Justice Parenti, which goes against the  
14 majority in the Aguirre-Jarquín case that I just cited;  
15 however, it's a concurring opinion, and the opinion  
16 underscores the problem with our current death penalty  
17 scheme and the way that it's employed, the way it's  
18 reviewed.

19 So, I have given some examples of specific  
20 interrogatories that I'm asking the Court to give the  
21 jury to allow them to tell precisely which aggravating  
22 circumstances they found and by what vote.

23 THE COURT: Hear response from the State.

24 MR. McMASTER: Judge, in addition to the Steele case  
25 that Mr. Moore has acknowledged, the State would ask the  
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1 Court to take a look at Supreme Court of Florida  
2 decisions in Coday versus State, that's C O D A Y,  
3 that's at 946 So.2d 988. And the Supreme Court of  
4 Florida decision in Hernandez versus State, that's at 4  
5 So.3rd 642, a 2009 decision.

6 And I have copies for the Court and counsel. May I  
7 approach?

8 THE COURT: Yes, you may.

9 MR. McMASTER: In the Coday decision at Page 15, the  
10 printed number page of the opinion, the Florida Supreme  
11 Court noted in the first full paragraph, "We  
12 specifically held that it is a departure from the  
13 essential requirements of the law to use a special  
14 verdict form detailing the jury's determination on the  
15 aggravating circumstances."

16 In the Hernandez opinion, at Page 19, they held  
17 that similarly, "We have also rejected Hernandez's  
18 alternative argument that a special verdict form  
19 indicating the aggravating factors found by the jury  
20 should have been used."

21 It is perhaps a circumstance that Judge Parenti  
22 might find compelling, however the Florida Supreme Court  
23 has clearly ruled against it and has held that it is a  
24 deviation from Florida law to do that, so we would  
25 suggest that that be denied.

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1 THE COURT: Motion Number 24 is denied.

2 MR. MOORE: Motion 25, Motion in Limine Regarding  
3 Grand Jury. And very simply, I'm asking that the  
4 charging document, which is an indictment in this case  
5 as is required by the constitution, that it be referred  
6 to as a charging document and not by the Grand Jury.  
7 And that there be no reference to the fact that the  
8 charging document was arrived at through the Grand Jury  
9 process.

10 There is no reason for that terminology other than  
11 to inform the jury that another body has convened and  
12 passed on the evidence and arrived at a decision that  
13 this case should be charged.

14 That's confusing to juries. I've seen it in the  
15 past. I actually recall one, during voir dire, former  
16 foreman of a grand jury who claimed that her grand jury  
17 indicted the defendant beyond a reasonable doubt. And  
18 then trying to scramble to undo that damage.

19 So, there is no benefit to be gained by referring  
20 to the indictment as an indictment. It's a can of worms  
21 to be avoided and the opening of that by just referring  
22 to it as a charging document, which is my request.  
23 That's the basis of my motion, that no party refer to  
24 the charging document other than as just that.

25 THE COURT: Okay. Response from the State.  
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1 MR. McMASTER: Judge, the fact of the matter is that  
2 the charges were in fact returned by a Grand Jury and  
3 the document is entitled an Indictment. I mean, to  
4 ignore that is to ignore reality.

5 Having said that, it's the Court's discretion as to  
6 what you want us to refer to the document as.

7 MR. MOORE: There's no downside to it, Judge, as I  
8 see it. There's only the possible benefit of avoiding  
9 jury confusion about what that exactly means and what  
10 the standard of proof is for a Grand Jury.

11 I mean, I suppose the State's response could be,  
12 well, let's get into it, let's just tell them it's  
13 probable cause and that's less than beyond a reasonable  
14 doubt. But I think that just further causes confusion  
15 on the part of the jury. Why even go there when we can  
16 avoid it all?

17 THE COURT: Mr. Moore, do you have the indictment  
18 handy?

19 MR. MOORE: I do not.

20 THE COURT: I may have it in here, I'm not sure.  
21 I'm just going to see what it looks like.

22 Can the clerks by chance, can you look back at the  
23 actions filed and see if you can tell me where the  
24 indictment is?

25 I think I just found it. Is it Document Number 43?  
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1 MR. McMASTER: Do you want a copy of it, Judge? I  
2 can have it printed if you want.

3 THE COURT: Actually, if you'll print it so I can  
4 just have it.

5 MR. McMASTER: Yes, ma'am.

6 THE COURT: Actually, she's going to print it.  
7 She's got it.

8 I'm going to grant the motion. It's not to be --  
9 I'm going to grant it in that cannot refer to an  
10 indictment being returned by a Grand Jury. I have no  
11 problem with referring to it as the charging document  
12 instead of indictment. So, the Motion Number 25 is  
13 granted.

14 So, Mr. McMaster, you've got to make sure you  
15 advise the witnesses accordingly.

16 Okay. Number 26.

17 MR. MOORE: 26 is a Motion in Limine Re:  
18 Photographs, and I think I would ask the Court to pass  
19 on hearing that until we actually arrive at that portion  
20 of the trial where we're dealing with photographs.

21 Because unless the Court can see and we can all  
22 see, then we can't really make sense out of this. Best  
23 be argued later.

24 THE COURT: The Court will reserve on this motion  
25 until the time of trial.

1           Okay. Number 27.

2           MR. MOORE: Is a Motion for Disclosure of Penalty-  
3 Phase Evidence. Last week the Court heard and granted  
4 our motion requiring the State to identify its penalty-  
5 phase witnesses, as distinct from just the guilt-phase  
6 witnesses. And that being the case, we're asking the  
7 Court to also direct the State to disclose the evidence  
8 that it intends to introduce through those witnesses.

9           We have reams of disclosure and discovery in this  
10 case, but in trying to sort out what is going to be  
11 introduced at the penalty phase from a Defense  
12 standpoint, I mean the State already knows, we shouldn't  
13 be made to guess and should if we are able to get at  
14 least some advance notice about who the witnesses are,  
15 what evidence they're going to be providing.

16           If all the State can do is statements previously  
17 provided through this witness and a place where we can  
18 go and see where those statements are, that would I  
19 think be sufficient. But they'll need to give it to us  
20 twice, but it's just not giving it to us a second time  
21 by itself, it's also identifying as the penalty-phase  
22 evidence.

23           So, I'm asking that the State in addition to having  
24 to identify the witnesses it intends to call at the  
25 penalty phase, the evidence that the State proposes to

1 offer through those witnesses.

2 THE COURT: Response from the State.

3 MR. McMASTER: They're not asking for disclosure of  
4 penalty-phase evidence. They're asking for essentially  
5 a detailed bill of particulars as to specifically which  
6 items of evidence we intend to use during the penalty  
7 phase.

8 First, let me make it clear that all of this  
9 evidence has in fact been disclosed to the Defense. If  
10 you look at their motion, they basically track Rule  
11 3.220 Discovery Requirements the State has in producing  
12 all of its evidence, whether for the guilt phase or the  
13 penalty phase, which has been done.

14 Now he's asking us not only to detail the  
15 particular aggravators, which the Court has ordered us  
16 to do and we will comply with in writing, although I did  
17 it verbally last week, they know what evidence that they  
18 have received from the State in connection with this  
19 case would apply to those particular aggravators.

20 It is an additional imposition on the State that is  
21 not required by law, it's not justified under these  
22 facts and circumstances, and we would oppose it.

23 MR. MOORE: Judge, it's like handing us a phone book  
24 and saying, here, your witnesses are in here, find them.  
25 I mean, we have a witness list with nearly 200 names on  
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1 it. We have hundreds of reports. And trying to figure  
2 out, beyond guessing, what's going to appear at the  
3 penalty phase, puts us at a disadvantage that we  
4 shouldn't have in this case involving the death penalty.

5 I don't care what terminology we use to refer to  
6 what the State has to do, whether it's a bill of  
7 particulars, I'm just saying we want the State to have  
8 to provide to us specifically what evidence they're  
9 going to be introducing to these witnesses. What  
10 statements, what exhibits, what type of demonstrable  
11 evidence. Whatever it is they intend to introduce  
12 through these witnesses, we're asking for that.

13 If they've already provided it and they can show  
14 us where they provided it and that it will be and can be  
15 identified as penalty phase evidence, then that's what  
16 we're looking for. Not just a 200-witness list and  
17 hundreds of police reports, and leaving us to try to  
18 figure out what's going to appear at the penalty phase.

19 So, we shouldn't have to do that. If the State  
20 knows what it's going to do, then the State should be  
21 required to tell us what it's going to do. It's not a  
22 tactical matter. I mean, if they're disclosing who the  
23 witnesses are, what evidence is going to come through  
24 those witnesses? That's what we're asking for. Whether  
25 you call it a bill of particulars or anything else, it

1 doesn't matter, but that's in substance what we're  
2 asking for.

3 THE COURT: Okay. I'm going to deny this motion. I  
4 thought I was pretty generous last week in my other  
5 rulings, and you have that evidence and I think that  
6 would not be appropriate.

7 So, I'm going to deny the request with regard to  
8 Motion Number 27.

9 Number 28.

10 MR. MOORE: Judge, I'm going to ask the Court to  
11 hear this at the instruction conference, the charging  
12 conference. I've already addressed a number of the  
13 issues, a number of objections that I have, but I would  
14 ask the Court to defer hearing this until we actually  
15 talked about jury instructions.

16 THE COURT: Okay. I'll reserve it --

17 MR. McMASTER: Judge, the State would just ask you  
18 to outright deny it. I mean, it's clear from the Foster  
19 quote that I read earlier and talked about last week,  
20 that the Florida Supreme Court as late as October 13th  
21 of 2013, has approved the specific death penalty  
22 standard jury instructions that are available for use in  
23 this case.

24 If he's got additional changes that he wants to  
25 make, he can certainly submit those proffered

1 instructions at the jury instruction conference and the  
2 Court can rule on those individually. But to do it at  
3 this point, I think it's clear that the standard ones  
4 are acceptable, certainly to the Florida Supreme Court.

5 MR. MOORE: I'm asking the Court to reserve on this  
6 until we're actually looking at the proposed  
7 instructions and talking about them.

8 THE COURT: But Mr. Moore, how does this motion --  
9 how is it different from Motion Number 23?

10 MR. MOORE: Well, it essentially states the same,  
11 it's just it gives a case law background in the attached  
12 memorandum. And I think it would be best to deal with  
13 the specific instructions when we have the instructions  
14 in black and white, and then we can point to exactly  
15 what it is, instead of leafing through this motion,  
16 which is voluminous, and trying to deal with it that  
17 way.

18 I mean, it's better to deal with it when you've got  
19 actually what you're objecting to in front of you, and  
20 making the objections and getting rulings based upon  
21 what the Court proposes to do. We're not there yet.

22 I mean, we've got some questions of what the  
23 aggravating circumstances are going to be and what the  
24 mitigating circumstances are going to be that are read  
25 to the jury, and I think it would be more appropriate to



1 deal with it at that time.

2 THE COURT: Okay. The way the motion is framed, I'm  
3 going to deny the motion. I mean, obviously at the time  
4 of the charging document with regard to specific  
5 objections, I'll allow you to make your arguments as you  
6 deem appropriate at that time.

7 Okay. Number 29.

8 MR. MOORE: 29 is Motion for Additional Peremptory  
9 Challenges Due to Numerical Disparity Regarding  
10 Peremptory Challenges Provided by Rule 3.350(a) Florida  
11 Rules of Criminal Procedure and Section 913.08 Florida  
12 Statutes and Due to Sensitive Voir Dire Issues in this  
13 Case.

14 There is a disproportionate jury -- well, there's a  
15 disadvantage in death-penalty cases in exercising  
16 peremptory challenges, in that, to illustrate, when a  
17 non-life-or-death felony is tried, it would be tried by  
18 a six-person jury. There are six peremptory challenges  
19 available to both sides. That is one challenge per seat  
20 on the jury.

21 If it's a felony that's punishable by life, but a  
22 non-death case, there are ten challenges for a six-  
23 person jury. So, that would be one-and-two-thirds  
24 strike per seat on the jury.

25 In a death penalty case, there are ten challenges  
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1 for 12 seats on the jury, so that's less than one  
2 challenge per chair, one challenge per seat on the jury.

3 So, a Defendant in a case where it's usually  
4 infinitely, significantly more complex, where the stakes  
5 are definitely higher, where the death penalty's being  
6 sought, and especially in a case where there are many  
7 other issues; law enforcement involvement and high  
8 publicity, that the disproportionate challenging  
9 potential that a Defendant has in a death-penalty case,  
10 would justify the Court giving more peremptory  
11 challenges than just the ten that we're allotted.

12 So, and of course, both sides get an equal number  
13 of extras. But because of the charge, because of the  
14 other factors of the victim being a law enforcement  
15 officer and the extensive media coverage, we would ask  
16 the Court to grant an additional number of peremptories  
17 to both sides in dealing with these issues, because I  
18 frankly don't think ten will be enough, even with the  
19 for-cause challenges, I don't think that -- I think that  
20 we're at a disadvantage on the Defense side by not  
21 having more than the allotted ten peremptories that  
22 we're being given.

23 THE COURT: Hear response from the State.

24 MR. McMASTER: Well, Judge, I'm sure the Florida  
25 Supreme Court had all that information before it when it  
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1 fashioned the Rule in the first place. I think we  
2 should approach this as we do any other trial with  
3 respect to the need for additional peremptory  
4 challenges. Go with what the Rule allows first, and if  
5 more are needed, we raise it and argue it at that point  
6 and the Court can provide additional peremptories if  
7 necessary.

8 MR. MOORE: Judge, I don't see this as being just  
9 like any other trial. I mean, for many reasons it's  
10 not. It's in a category by itself. And for the reasons  
11 that I've mentioned, I don't need to repeat.

12 And so, for an exceptional case, then exception  
13 should be made, I think. But both sides are equally  
14 advantage. Neither side is disadvantaged by what I'm  
15 proposing.

16 THE COURT: Anything else from the State?

17 MR. McMASTER: Just briefly, Judge. I mean, the  
18 Florida Supreme Court is as fond of saying death is  
19 different. Had they decided that it requires additional  
20 peremptory challenges, they certainly could have  
21 provided for them and they did not.

22 So, it's the State's position we go with what the  
23 Rule says, and if we need them as they come up, the  
24 Court can deal with it at that point.

25 MR. MOORE: That's our position, it's discretionary  
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1 with the Court. The Court can take stock of the case  
2 before it and not just put it in this lump category of  
3 it's just like all the other cases, because it isn't,  
4 and acknowledge that and give both sides equal  
5 peremptory -- number of peremptory challenges to deal  
6 with this unique case.

7 THE COURT: Okay. The Defense's Motion Number 29 is  
8 denied.

9 Mr. Moore, if you feel that you need, based on  
10 specific circumstances that come up during the jury  
11 selection, we can readdress them.

12 Okay. Number 30.

13 MR. MOORE: Number 30, our circumstances have  
14 changed with respect to. Let me read it. Motion for  
15 Juror Questionnaire to Supplement Voir Dire and Proposed  
16 Sample Questionnaire. So, for that reason, we will  
17 withdraw that motion at this time.

18 THE COURT: So, Number 30 is withdrawn by the  
19 Defense.

20 MR. MOORE: Correct.

21 THE COURT: Okay. Number 31.

22 MR. MOORE: 31 is a Motion for List of Prospective  
23 Jurors, which I believe the Court has already stated we  
24 will be getting about two weeks before trial. Would  
25 that be about right?

1 THE COURT: I think Mr. Pirrolo requested a certain  
2 date. I conferred with the jury clerk and that date was  
3 acceptable. And the attorneys shall receive the jury  
4 venire list by February 18, 2014.

5 So, I think that motion would be moot at this time.  
6 Or I could --

7 MR. MOORE: Is there an earlier date? I mean, is  
8 that as early as we can get it?

9 THE COURT: That was the date requested, that was  
10 the date I discussed, and there is no other date that I  
11 discussed with them.

12 MR. MOORE: Okay.

13 MR. McMASTER: Judge, can I make an inquiry about  
14 that?

15 THE COURT: Yes, sir.

16 MR. McMASTER: I certainly don't oppose getting a  
17 list of the jurors, I think it will be helpful for both  
18 sides.

19 I would like clarification. If the information  
20 that's going to be provided to the State and the Defense  
21 is going to include such information as dates of birth,  
22 specific addresses or anything along those lines. And  
23 if it does, I'd like some guidance from the Court about  
24 disclosure of any of that information to parties other  
25 than the parties involved in the trial.

1 THE COURT: Yeah, this might be a good place to deal  
2 with that, and we'll address it in this motion.

3 I'm going to grant the motion, and the list will be  
4 provided on the date I just gave you. Is that February  
5 18th?

6 MR. MOORE: That's what you said.

7 THE COURT: Okay. February 18th, 2014. What I  
8 understand the list will consist of is the normal list -  
9 - the normal sheet that we get in every case. I didn't  
10 ask for anything more.

11 I do think -- you know, when we pick the jury, the  
12 jurors are going to be numbered, so their names are not  
13 to be used. Obviously this list is not going to have  
14 those numbers on it. But when they come out, they're  
15 going to have -- when they walk into the room, they're  
16 going to have a number on them. And it is the Order of  
17 the Court not to refer to them by name, but by number.

18 I will refer to them by number. Everyone will  
19 refer to them by number. But you will have their names  
20 and you will have -- I don't know if that standard sheet  
21 -- I believe it does not have their addresses, it just  
22 has the city.

23 MR. McMASTER: That's correct, Judge, and it does  
24 not have their dates of birth, which brings me to Motion  
25 Number 32.

1           The Defense in Motion Number 32 is asking for  
2 prosecutorial investigations of prospective jurors so  
3 that they don't have to duplicate any State effort in  
4 any investigations that we do of the backgrounds of the  
5 jurors to ensure that they're qualified.

6           I can tell the Court that in practice, the  
7 information that the State is provided by the Court is  
8 not particularly helpful in conducting any kind of  
9 meaningful background investigation.

10           We do not have the dates of birth. Many times we  
11 don't have the middle names. The information that we  
12 have makes it extremely difficult to match up a  
13 prospective juror with any information that we may have  
14 access to through our own database or through any of the  
15 law enforcement officers' databases.

16           So, at best, we are guessing for the most part, as  
17 to any particular name that we are given as a  
18 prospective juror as to what particular criminal history  
19 they may have, which is what I understand the Defense is  
20 primarily interested in.

21           And I just bring that to the Court's attention  
22 because without that information, we would certainly be  
23 opposing turning over any prospective or prosecutorial  
24 investigations of the prospective jurors because I can't  
25 guarantee that the information I would be giving to the

1 Defense has any relationship to the prospective jurors.

2 THE COURT: Would it be helpful if the list included  
3 their date of birth?

4 MR. McMASTER: Certainly to the State.

5 MR. MOORE: It would be. I mean, we -- the piece of  
6 the sheet that the Court's talking about, the  
7 information sheet is, to be blunt, it's worthless. We  
8 don't get anything out of that.

9 THE COURT: I don't know what else do you want. I  
10 mean, that's what the jury clerks get.

11 MR. MOORE: I don't sit at counsel table for the  
12 State, and I don't know what investigations they do.  
13 And Mr. McMaster has addressed that, and if they for  
14 example find criminal histories of defendants or any  
15 related information which could be in another context  
16 considered Brady evidence because of their ties to law  
17 enforcement, because of their ties with prosecutors or  
18 those sorts of things, which I don't know whether Mr.  
19 McMaster, I'm sure he wouldn't, a Prosecutor's not going  
20 to turn that over absent a Court Order, but we would  
21 certainly want to know about it in voir dire.

22 THE COURT: Okay.

23 MR. MOORE: So, it's those sorts of things. Not  
24 just criminal history, but for any reason why they may  
25 be predisposed to being sympathetic to one side or the



1 other.

2 THE COURT: Okay. I'm still in -- you all moved  
3 kind of to Number 32. I'm still on Number 31. I'm  
4 going to grant that with regard to that motion. The  
5 Court's going to provide you the list by February the  
6 18th, 2014. The list is considered confidential. It's  
7 not to be distributed beyond the attorneys.

8 Now, Mr. McMaster, I'll have that list include the  
9 date of births. I think the date of births would not be  
10 -- would be reasonable.

11 I'm concerned about the address, because I think --  
12 if I get you the date of births, are you going to be  
13 okay with that? If I get you -- you're going to have  
14 the city. Just not going to have their full address.

15 MR. McMASTER: That's fine, Judge. The date of  
16 birth is what was most important to the State.

17 THE COURT: I mean, I know what you normally do, and  
18 I would think you would need the date of birth to be  
19 able to do that.

20 MR. McMASTER: Well, I know that the Court in  
21 several of the trials that we have had together, I've  
22 had information come up and I couldn't confirm whether  
23 or not the individual juror was the person who I had  
24 obtained criminal records on, and we had to verify each  
25 one individually through the jury clerks.

1 THE COURT: I'm going to say the date of birth and  
2 full name, if available to the jury clerks.

3 MR. MOORE: Could we also have the city of  
4 residence?

5 THE COURT: It is on there. That's on there, what I  
6 understand. The city of residence is on there.

7 MR. McMASTER: Yes.

8 THE COURT: And I didn't realize that you weren't  
9 getting enough of the full name. Full names as  
10 available to the jury clerks. I can't imagine they  
11 don't have the full name, but they're only going to have  
12 what they have, because it's what's on their driver's  
13 license, I believe.

14 Okay. Anything else with regard to Number 31?

15 MR. McMASTER: No, ma'am.

16 MR. LANNING: Judge, this is the first that  
17 counsel's become aware of the Court ordering parties to  
18 refer to jurors by number.

19 THE COURT: Judge Dugan has done it. We've had some  
20 unusual requests recently by the public with regard to  
21 transcripts, which would include the jury's names, and  
22 so, we've made a decision, the Judges, to go to a system  
23 -- I mean, Judge Dugan has done it for some time -- so,  
24 we've made a decision to go to a system which includes  
25 numbers, so that the jurors' names are not mentioned out

1 loud to the general public in jury selection or during  
2 the course of the trial.

3 You will have their names. You will have their  
4 names.

5 MR. LANNING: Right.

6 THE COURT: You will. But it's not to be referred  
7 to. For instance, during jury selection, the way we  
8 previously did it, we referred to the jurors as their  
9 names, and --

10 MR. LANNING: And I'm just picturing a real  
11 difficulty not doing that.

12 THE COURT: Well, they're going to have a tag right  
13 here, it's going to say Number 15. Right there. So --  
14 they're big, they're like this big. So, you're going to  
15 be able -- it's going to be right there and it's going  
16 to be available to see. And if you would --

17 We're going to start this procedure January 27th,  
18 and we're going -- we have not done this before, this  
19 has recently come up. I know Judge Dugan has used  
20 numbers for approximately a year. We had some recent  
21 requests for disclosures of jurors that were unusual,  
22 that caused some concerns for us with regard to their  
23 confidentiality. And I think it would be appropriate to  
24 refer to them as numbers instead of their names.

25 MR. LANNING: Well, having just heard about it, ask  
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1 for opportunity to look into it and if at some future  
2 point, if appropriate to do so, bring it up.

3 THE COURT: I'll be certainly open to hear that.  
4 And you're welcome to come in and watch jury selection  
5 or see how it works starting January 27th, or to watch  
6 how Judge Dugan does it.

7 I have had a conversation with Judge Dugan about  
8 how they do it. They said it hasn't been a problem.

9 You know, we always laugh in our courtroom that we  
10 pronounce people's names not very well, and so, maybe  
11 the numbers would be a little easier than some of the  
12 jurors' last names.

13 MR. MOORE: Is this going to be across the board,  
14 Judge, for all cases?

15 THE COURT: We're doing it in all cases starting  
16 January 27th.

17 MR. MOORE: All circuit judges are all --

18 THE COURT: It's my understanding that after the  
19 discussion that we had, most of the circuit judges are  
20 going towards that. We are even going as far as doing  
21 an administrative order with regard to that. Now, after  
22 the administrative order, they'll have to do that. But  
23 most of us are starting it now. So, I think it would  
24 be appropriate to do that.

25 So, I'll be happy to hear any objections to that.

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1 MR. MOORE: We do have a need to talk to the Court  
2 at the bench about the jury information sheet.

3 THE COURT: Okay.

4 (Bench conference was had as follows:)

5 THE COURT: Yes.

6 MR. MOORE: We have -- we will be assisted by a jury  
7 selection specialist.

8 THE COURT: Okay.

9 MR. MOORE: And she has requested those information  
10 sheets. And she's a professional, she's a Ph.D. She's  
11 been involved in a number of cases and she understands  
12 the work product and the attorney/client privilege and  
13 all the limitations that the Court and the Rules of  
14 Ethics and the law impose on the disclosure of sensitive  
15 information. And she would, when directed, directed by  
16 us, I don't even think it's necessary, but we would  
17 direct her not to disclose that information to anybody.

18 But I'm just saying, the Court has just said we  
19 can't divulge it to anybody, putting limits on it, but  
20 she would have to be included in that circle.

21 THE COURT: Okay. I'm glad you -- I mean, I didn't  
22 know if that was going to be an issue, no one said  
23 anything, so I'm glad you brought that to my attention.

24 Response from the State.

25 MR. McMASTER: The Court's discretion.  
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1 THE COURT: I'll put list to be disclosed to the  
2 attorneys and under their supervision can be disclosed  
3 to their experts.

4 MR. MOORE: That ought to cover it.

5 THE COURT: I mean, should I put jury selection  
6 experts?

7 MR. MOORE: Well, just experts in there. She's the  
8 only one I anticipate we're going to send it to. But if  
9 we give it to anybody else, we would inform the Court  
10 and the State. But at this point she's the only one we  
11 intend to give it to.

12 THE COURT: Okay. Anything else?

13 MR. McMASTER: There may be some exposure to the  
14 investigators in our office to assist in running  
15 criminal background checks.

16 MR. PIRROLO: And be the same with our  
17 investigators?

18 MR. MOORE: Yeah, of course.

19 MR. PIRROLO: Can I include the investigators from  
20 our office, as well?

21 THE COURT: I'll put and investigators. Didn't say  
22 whether they are the State or the Defense.

23 Okay. Thank you, sir.

24 (Bench conference was concluded, after which the  
25 following proceedings were had:)

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1 THE COURT: Okay. Are we done with Number 31?

2 MR. McMASTER: I believe so.

3 MR. MOORE: We are.

4 THE COURT: Okay. We'll move to 32.

5 MR. MOORE: Well, we got into that a little bit, but  
6 any information gleaned by the State with respect to the  
7 prospective jurors, and I think it would only be fair  
8 that we would have to provide reciprocal discovery of  
9 whatever we learn, but that should be made available to  
10 us. And not just limit it to criminal histories, but  
11 any involvement that a person has that could influence  
12 the person's predilection or sympathy, I guess, toward  
13 one side or the other. And that could be connection  
14 with law enforcement, it could be probation and parole,  
15 it could be any number of things, which would be  
16 recognizable as influencing a person's leanings one way  
17 or the other.

18 THE COURT: Okay. Response from the State.

19 MR. McMASTER: Well, Judge starting with the easy  
20 set first. If there are criminal histories of the  
21 prospective jurors, I don't have any problem turning  
22 over the conviction information and any information  
23 about pending charges or any investigations that the  
24 State's aware of.

25 With respect to the other information, if it falls  
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1 within --

2 THE COURT: Juste one second. You said pending  
3 charges and what came after that?

4 MR. McMASTER: Or investigations that the State  
5 would be aware of.

6 THE COURT: Okay.

7 MR. McMASTER: I mean, I can't just turn over the  
8 NCIC-FCIC reports that may be generated. Those are not  
9 allowed to be turned over by us. The substance of the  
10 information with respect to convictions I'd be more than  
11 happy to detail and provide to counsel. And if State  
12 becomes aware of any pending cases or investigations,  
13 we'll certainly turn that information over, also.

14 I just don't want the Order to be such that the  
15 State is going to be compelled to go out there and look  
16 into every prospective juror's life and turn it upside  
17 down and then turn any information that we get, over to  
18 the Defense.

19 It's not what the State does, not even in these  
20 cases. And if any information is generated that would  
21 qualify as impeaching information or Brady type  
22 information, certainly the State's aware of its  
23 obligations to turn that over and we will do that.

24 MR. MOORE: I didn't suggest in any way that the  
25 State conduct any investigations on our behalf. I don't  
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1 know where that conclusion could have come from.

2 But I'm asking for the State to give us what they  
3 have, what they discover, what they stumble onto, to  
4 turn that over to us.

5 THE COURT: Okay. I heard conviction information,  
6 pending charges or pending investigations and any Brady  
7 and impeachment information. What else would there be,  
8 Mr. Moore?

9 MR. MOORE: Any connections with law enforcement,  
10 for example, which might have an impact on the way a  
11 jury perceives a case or in the way they would vote at  
12 the case.

13 THE COURT: Normally wouldn't you solicit that  
14 information during jury selection?

15 MR. MOORE: I know, we do, but if the State comes  
16 across that information, and they have more resources  
17 than we do, if they're aware of it, then that falls  
18 within a category of what we're asking that the State  
19 provide to us.

20 Not conduct an investigation. We're not conducting  
21 investigations for them, they're not doing it for us.  
22 But if they come across information like that during the  
23 course of their preparing for trial, then it should be  
24 given to us. That's what I'm saying.

25 THE COURT: Okay. Response from the State.  
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1 MR. McMASTER: I don't know where I'd go to find out  
2 if somebody has any particular law enforcement  
3 connections, other than the questions that we ask them  
4 when they come into court in the first place.

5 So, if I happen to run over anything like that and  
6 stumble into it, and I think it's going to make a  
7 difference, I'll certainly be turning that over.

8 MR. MOORE: Okay. And I think I --

9 THE COURT: I don't know how to put that in a Court  
10 Order.

11 MR. MOORE: Criminal histories, connections with law  
12 enforcement.

13 THE COURT: I'll put connections with law  
14 enforcement.

15 MR. McMASTER: If it's in the possession of the  
16 State, Judge.

17 THE COURT: If it's in the possession of the State.

18 MR. MOORE: And I think I understood Mr. McMaster to  
19 say those documents that they can't give us, NCIC  
20 reports, however they can't give those to us, but they  
21 can give us the substance of them, is what I heard him  
22 to say.

23 THE COURT: They can give you a what?

24 MR. MOORE: The substance of what's in the report.

25 THE COURT: Yes, that's what I understand. We  
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1 haven't had an issue with that before. They have been  
2 forthcoming with that information in the trials that my  
3 prosecutors have been in front of me with that  
4 information.

5 Okay. So, with regard to Number 32, I'll grant  
6 that with the limitations and the information that we  
7 discussed that they'll disclose. And I'll put that  
8 specifically in the Order.

9 Okay. Number 33 we addressed previously. So,  
10 Number 34.

11 MR. MOORE: This, Judge, given the media coverage  
12 and the fact that the victim is a police officer and  
13 this is a death-penalty case, I would ask the Court by  
14 my motion to do a voir dire of the jury, not as to the  
15 substance of their verdict or any information about  
16 their deliberations, but rather to ask a generic  
17 question of whether at that point, if we get to this  
18 point, if the Defendant is found guilty of first-degree  
19 murder, that they would be able to keep an open mind and  
20 be fair and impartial in their deliberations at that  
21 point, if they're capable of doing that. Or not.

22 I mean, it's a fair question that doesn't invade  
23 the province of the jury or the deliberation process,  
24 which we can't get into absent good cause, but it would  
25 be justified to ask the jury at that point, given the

1 sensitivity of the circumstances in this case, to ask  
2 whether at that point they can proceed on to the penalty  
3 phase and be fair and impartial and would be open to  
4 mitigating circumstances. Whether they can be open  
5 minded at that point.

6 And if they say no, which is conceivable, then they  
7 shouldn't be on the jury. And so, that's why it would  
8 be a fair question, without invading the province of the  
9 jury, for the Court to inquire. Very simple inquiry.  
10 No followup questions, just can you or can't you.

11 THE COURT: Hear response from the State.

12 MR. McMASTER: Judge, in the Coday case that the  
13 State submitted to the Court earlier today --

14 THE COURT: Yes, sir.

15 MR. McMASTER: -- I believe there was, on Page 16  
16 of that opinion, there was an attempt by the defense to  
17 conduct juror interviews during the death penalty phase,  
18 regarding their attitudes and whatever, and that was  
19 disapproved of by the Florida Supreme Court.

20 It's the State's position that it's not provided  
21 for in the Rules, and it's opening up a whole can of  
22 worms with respect to getting into the jurors' thought  
23 processes and why they returned a particular verdict.

24 I know that in his motion he wants to find out  
25 whether any of the attitudes of the jury have changed

1 toward the Defendant due to the unique circumstances of  
2 this case.

3 Well, Judge, if the jurors during the guilt portion  
4 of this case after the complete voir dire has been done,  
5 they've been seated and they have heard the entire trial  
6 and returned a guilty verdict that gets us to the  
7 penalty phase, if their attitudes toward the Defendant  
8 haven't changed, I would be amazed.

9 The Florida Supreme Court has not seen a need to  
10 allow additional voir dire following the guilt phase.  
11 The Coday case on Page 16 indicates that it would be  
12 improper to allow questioning of the jurors at that  
13 stage without going through the formal process of filing  
14 the affidavits and following the rules that would allow  
15 an inquiry of the jurors.

16 So, the State opposes this motion. We'd ask that  
17 it be denied.

18 MR. MOORE: Well, in the Coday case, the  
19 Defendant's asking during the penalty phase to interview  
20 the jurors regarding their media -- exposure to media  
21 reports. And so, we're not asking for that. We're not  
22 asking for specific information that they have.

23 And let me be specific; I thought I was. I'm not  
24 asking to delve into whether just as a generic question  
25 they suddenly feel differently. You know, once they

1 found -- if they find Mr. Bradley guilty of first-degree  
2 murder, do you feel differently about him. That's not  
3 what I asked.

4 I put it more specifically, more succinctly. That  
5 is, that the juror is asked, at this point having found  
6 Mr. Bradley guilty of first-degree murder, do you  
7 believe that you can continue onto the penalty phase and  
8 be fair and impartial in determining aggravating  
9 circumstances and mitigating circumstances. Can you  
10 keep an open mind in evaluating evidence that's  
11 presented to you regarding mitigating circumstances.

12 It's not an inquiry into their exposure to media  
13 coverage, and it's not during the penalty phase. This  
14 is pre -- this is after presumably a verdict of guilty  
15 of first-degree murder and before they begin  
16 deliberating at the penalty phase. And it's a question  
17 unrelated to their deliberations.

18 And it's very specific in what we're asking for.  
19 And we would not propose to ask any followup questions.  
20 It's just a very simple yes or no; you can do it, no,  
21 you can't do it.

22 And because at that point if they can't -- if they  
23 say because of what I've heard, I cannot consider  
24 mitigating circumstances, they shouldn't be sitting at  
25 the penalty phase. And the only way to find out about

1 it is to ask them.

2 So, it's not an unfair, it's not an unreasonable  
3 request, and it does not intrude into the jury  
4 deliberation process. And I believe it's discretionary  
5 with the Court. It's certainly not prevented by the  
6 Coday case.

7 THE COURT: Number 34, the motion is denied.

8 Motion Number 35.

9 MR. MOORE: 35. Motion for Special Verdict as to  
10 Theory of Guilt. In this case, the State has charged a  
11 first degree premeditated murder, they've also charged a  
12 robbery and of course they can seek a conviction on  
13 either or both, felony murder and first degree  
14 premeditated murder.

15 But without guidance from the jury as to which  
16 theory they relied upon, whether it's one or the other  
17 or both, then it would inform the Court, if the Court  
18 had that information, of let's say they were proceeding  
19 on a felony murder theory, as to how to treat one of the  
20 potential aggravating circumstances. We don't know for  
21 sure, because there's cold calculated, premeditated; I  
22 don't recall the State's position on that. When I asked  
23 Mr. McMaster before our last hearing, he was thinking  
24 about it. So, unless they have decided one way or the  
25 other on that, we're still left to guess.

1           But if the State were to propose that as an  
2           aggravating circumstances after the jury returned a  
3           special verdict that they are basing their conviction of  
4           first-degree murder on a felony murder theory, then we  
5           certainly have an impact on whether the Court chose to  
6           give the instruction on cold calculated, premeditated.  
7           It would prevent the Court from doing that, in my view.

8           And so, the courts in this state give special jury  
9           verdicts with respect to whether a firearm is used,  
10          whether a weapon is used, and so it's not without  
11          precedent that the jury is asked to give its opinion  
12          about a fact that the jury is required to find.

13          So, we're not invading the province of the jury  
14          there either. And it gives the Court more information  
15          to use in deciding what to instruct the jury on and even  
16          what aggravators to find when the Court gets around to  
17          deciding what sentence to impose and what to impose that  
18          sentence upon.

19          So, my request is a specific special jury verdict  
20          with respect to the theory of first-degree murder,  
21          whether it's felony murder or premeditated murder,  
22          either, if the jury relies upon in arriving at its  
23          verdict.

24                 THE COURT: Hear response from the State.

25                 MR. McMASTER: Judge, this is similar to the special  
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1 verdict form that they requested with respect to the  
2 aggravators. In fact, in the motion, Mr. Moore on Page  
3 3 of the motion indicates that the case of State versus  
4 Steele is against him, where that Court held that the  
5 Trial Court departs from the essential requirements of  
6 law by using a special penalty phase jury form, but then  
7 they're continuing to argue that one is called for,  
8 although it looks like here they're talking about  
9 unanimous finding as to aggravating circumstances, which  
10 is what I think the issue was in Steele.

11 The State would ask the Court to consider two  
12 separate cases. One is the Supreme Court case, Florida  
13 Supreme Court case of England versus State, that's at  
14 940 So.2d 389, it's a 2006 decision. And in that case  
15 on Page 10, they refer to the U.S. Supreme Court's  
16 decision in Schad versus Arizona, that's S C H A D.  
17 That's at 111 Supreme Court 2491.

18 I have copies for the Court and counsel. May I  
19 approach?

20 THE COURT: Yes, you may.

21 MR. McMASTER: In the England decision at Page 10,  
22 the Court noted under the provision marked B, Special  
23 Verdict Form, that in Schad the Supreme Court held that  
24 the U.S. Constitution did not require the jury to come  
25 to a unanimous decision on the theory of first-degree

1 murder, and that separate verdict forms for felony and  
2 premeditated murder were not required.

3 And in Johnston, this Court held the Trial Courts  
4 need not submit special verdict forms to the jury  
5 regarding the alternate theories of felony first-degree  
6 murder and premeditated first-degree murder.

7 In fact, the cases hold that they're not required  
8 to come to a unanimous decision on which theory of guilt  
9 each particular juror may believe in, as long as 12 of  
10 them believe that one or the other theory has been  
11 proven.

12 The Supreme Court of both the Florida Supreme Court  
13 and the United States indicate that the Defense request  
14 would not be a valid request. It should be denied.

15 MR. MOORE: Let me reiterate that this is not a  
16 penalty phase request where Steele would be applicable  
17 because Steele dealt with a specific -- a special  
18 penalty phase verdict form. We're asking for a guilt  
19 phase verdict form.

20 Specific jury verdict forms at the guilt phase are  
21 routinely used. And the examples that I gave were the  
22 use of a firearm, where the burglar is armed, and those  
23 warrant a special verdict form.

24 The Florida Supreme Court decided in Haliburton  
25 versus State at 561 248 in 1990, that a special verdict

1 form is not required, but it doesn't prohibit the use of  
2 that.

3 And so, we're not -- the Court should not rely on  
4 Steele, and despite what motion says, I do not agree  
5 that Steele is a conflict of what we're requesting,  
6 because Steele focuses on the use of that specific  
7 special jury verdict form at the penalty phase. We're  
8 asking for one at the guilt phase.

9 And so, it does not invade the province of the  
10 jury. It could be an additional fact that is required  
11 to be proved at the penalty phase, which is whether this  
12 is cold calculated, premeditated, and although it's at  
13 the guilt phase, it does inform the Court and would help  
14 the Court in finding whether that particular aggravating  
15 circumstances should be found if let's say the jury  
16 found that this is a felony murder and not a  
17 premeditated murder.

18 THE COURT: Okay. With regard to the Defense's  
19 Motion Number 35, that motion is denied.

20 Okay. Number 36.

21 MR. MOORE: I'm going to reserve this for the charge  
22 conference. I'd ask the Court to reserve ruling on this  
23 motion.

24 THE COURT: Hear response from the State.

25 MR. McMASTER: No objection.  
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1 THE COURT: Okay. Number 37.

2 MR. MOORE: Motion to Declare Section 921.141  
3 Florida Statutes Unconstitutional in Light of Apprendi  
4 because only a bare majority of jurors is sufficient to  
5 recommend a death sentence. It's addressed in Steele,  
6 State versus Steele, and they concluded that until Ring  
7 is revisited and overruled by the U.S. Supreme Court,  
8 that Ring will be the law of the land here in Florida.

9 However, the Florida Supreme Court was sufficiently  
10 bothered by it to recommend that the legislature revisit  
11 the issue of whether State of Florida would remain the  
12 outlier state and the only state where a finding of an  
13 aggravating circumstance or a recommendation of death  
14 can be by less than unanimity. And the legislature's  
15 response is then to speed up executions.

16 And so, it's a violation of Ring, it's a violation  
17 of Apprendi for Florida to commit a death recommendation  
18 based on a mere majority.

19 And I would point out in contrast, all the other  
20 states require unanimity, at least in finding an  
21 aggravating circumstance or in rendering a verdict of  
22 death.

23 And the Federal Death Penalty Act requires not only  
24 notice of the aggravating factors, but a death sentence  
25 be made unanimously.

1           So, I'm asking for those reasons. I acknowledge  
2 the holding of the Florida Supreme Court in Steele and  
3 other cases. And however, I'm requesting the Court  
4 consider the motion and grant it finding Florida's death  
5 penalty statute unconstitutional.

6           THE COURT: Hear response from the State.

7           MR. McMASTER: Once again, Judge, the Defense  
8 acknowledges that the law is against them as cited by  
9 the Steele case that they've put in their motion, and as  
10 well as the Foster case that I've been citing last week  
11 and this week.

12           Florida Supreme Court has specifically held that  
13 the standard jury instructions properly inform the jury  
14 of its role and correctly state the law.

15           So, we would ask that Number 37 be denied.

16           THE COURT: Motion Number 37 by the Defense is  
17 denied.

18           Motion Number 38.

19           MR. MOORE: 38, Motion to Declare Statute 921.141  
20 Unconstitutional for Failure to Provide a Jury Adequate  
21 Guidance in the Finding of Sentencing Circumstances and  
22 Preclude a Death Sentence. All they are given are  
23 aggravating circumstances, mitigating circumstances, and  
24 told to come back with a verdict.

25           And I mean, there are more instructions, but they  
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1 don't elaborate much more on the basic goal that they're  
2 given, but basic responsibility.

3 So, there's no guidance to them. There are 15  
4 aggravating circumstances; they could pick one or two  
5 each, and still arrive at a death recommendation which  
6 is less than unanimous under Florida's death penalty  
7 sentencing scheme.

8 So, we would ask the Court to find it -- again  
9 acknowledging the existence of the U.S. Supreme Court  
10 and Florida Supreme Court holdings, we would ask the  
11 Court to find Florida Statute unconstitutional on those  
12 grounds.

13 THE COURT: Hear response from the State.

14 MR. McMASTER: Once again, the Foster decision's  
15 pretty much on point on that.

16 And you know, Judge, I have to point out that in  
17 the last several months, there have been two executions  
18 approved by the Florida Supreme Court and stays denied  
19 by the U.S. Supreme Court.

20 It seems to me that if there was a problem that a  
21 Court has found with the constitutionality of the  
22 process that the State of Florida is using, one of those  
23 Courts might have noticed something.

24 It's the State's position that the instructions  
25 adequately state the law, adequately guide the jury and

1 the motion should be denied.

2 THE COURT: Okay. Motion Number 38 by the Defense  
3 is denied.

4 Motion Number 39.

5 MR. MOORE: This will be the final motion that I  
6 have, Your Honor. That would be the Motion of Exclude  
7 Evidence or Argument Designed to Create Sympathy.

8 And in this case, the problem is, due to the  
9 factors of the case, that this is a case that lends  
10 itself to an emotional involvement on the part of the  
11 jury. How can they not be. But there has to be a  
12 limit. They have to rely on the facts and the law and  
13 not be unduly influenced by emotion.

14 And we're asking that the State -- and I've seen  
15 it, it's like one of those situations where you can't  
16 maybe describe it, but you know it when you see it,  
17 especially if you're an experienced prosecutor for the  
18 Defense or for the State.

19 We're asking that an effort be made not to go in  
20 that direction and present evidence merely for the  
21 emotional impactive value. I'm not casting any  
22 aspersions on Mr. McMaster, but however, in a case like  
23 this, the temptation is great and we all could find  
24 ourselves in situations where we are dealing with  
25 evidence that is presented which appears to be mainly

1 for the emotional impact value.

2 And so, I'm asking the Court to be mindful of that.  
3 I can't think of a way that the Court could put in black  
4 and white, State, don't do this, don't do that, but  
5 however, other than to avoid or to -- to avoid  
6 presenting evidence solely for the emotional impact  
7 value. That's what we're asking in this case. And we  
8 will object as we deem appropriate.

9 THE COURT: Response from the State.

10 MR. McMASTER: Judge, I believe Mr. Brown addressed  
11 the victim impact evidence that the State intends to  
12 introduce in the penalty phase portion. I believe he  
13 indicated that the State would have that reduced to  
14 writing, would present a copy to counsel for their  
15 review and we would hash out any differences before it  
16 be submitted to the jury.

17 Similarly, with respect to the other evidence. The  
18 State intends to try this case based on the facts, not  
19 the sympathies involved.

20 Obviously it's a very sympathetic situation for the  
21 deputy and her family or the members of the community.  
22 But this case will be tried on its facts. State's aware  
23 of its obligations and we will comply with them.

24 MR. MOORE: We're not just focusing on the penalty  
25 phase, though. This is a global, entire trial; voir



1 dire, guilt and penalty phase we're asking.

2 THE COURT: Okay. With regard to this motion, I  
3 will reserve ruling. Allow you to make specific  
4 objections. At the time when you believe the evidence  
5 or arguments pertain to this motion, you can readdress  
6 it at that time.

7 Okay. Mr. Moore, with regard to 40, there was a  
8 lot of different information. Assume this was  
9 supplemental information. I didn't know if there was  
10 anything that the Court needed -- I thought that this  
11 was supplemental information --

12 MR. MOORE: That was actually --

13 THE COURT: -- for your arguments.

14 MR. MOORE: -- attached to the objection on  
15 standard jury instructions, which the Court reserved.

16 THE COURT: Okay. I did review this, but I wasn't  
17 sure where --

18 MR. MOORE: It was part of that.

19 THE COURT: Okay. So, it was part of --

20 MR. MOORE: The one that the Court reserved on,  
21 which I think was 28, Objection to Standard Penalty  
22 Phase Jury Instructions. So, that would be the motion,  
23 28 -- that submission would be 28 and 40.

24 MR. McMASTER: 26?

25 MR. MOORE: 28.

1 THE COURT: Okay. 28, I denied.

2 MR. McMASTER: Yeah, 26 you reserved on.

3 MR. MOORE: 26 is Motions Regarding Photographs.

4 THE COURT: Right.

5 MR. MOORE: That's not what I'm talking about.

6 THE COURT: There was another one with regard to the  
7 standard instructions.

8 MR. MOORE: Penalty phase jury instructions, and I  
9 asked the Court to reserve on that or to deal with it  
10 when we have the instructions in front of us.

11 THE COURT: You know what, I did deny that, but I  
12 mean, I'm going to allow you the opportunity to re-argue  
13 it if you think it's applicable at that time.

14 MR. MOORE: All right.

15 THE COURT: Okay. The remaining motions, are they  
16 what you would consider to be non-death-penalty motions?

17 MR. MOORE: We have a number of those, Your Honor,  
18 and I have them with me if the Court wants to hear them.

19 THE COURT: What I have is 42, 43, 44, 45, 46.

20 MR. MOORE: Let's see.

21 THE COURT: That's what would be left. I think  
22 everything else I've addressed.

23 MR. MOORE: My list goes up to 40.

24 THE COURT: I think we added everything. This is  
25 the Motion to Compel State to Identify Recorded Jail

1 Calls --

2 MR. MOORE: Right. Those are the non-death --

3 MR. McMASTER: Those are non-death penalties.

4 MR. MOORE: We can hear them now or we can wait.

5 We'll have more motions as time goes by, to present, of  
6 a non-death-penalty nature, on the 20th of February,  
7 which is our next go-around. So, we can do that and  
8 include those with the other motions that we present at  
9 that time, if the Court wishes.

10 THE COURT: Mr. McMaster?

11 MR. McMASTER: The Court's preference.

12 THE COURT: Well, I anticipate you're going to have  
13 more, and the State may have some.

14 MR. MOORE: The way these things happen, Judge --

15 THE COURT: No, I understand. I understand. I sit  
16 here, too.

17 MR. MOORE: Yes, the answer is yes.

18 THE COURT: I understand that probably both of you  
19 are going to have more. That's why I'm saying, maybe if  
20 we have the time right now, we should probably address  
21 these, because I anticipate -- I mean, if both sides are  
22 ready, that's not what was noticed, but I'm happy to  
23 address those and still set aside that time --

24 MR. MOORE: That's what we'll do.

25 THE COURT: -- because I anticipate there will be  
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1 more by both or -- by both sides.

2 MR. MOORE: Okay.

3 THE COURT: Okay. What I have is Number 42, it's  
4 the Motion to Compel State to Identify Recorded Jail  
5 Calls.

6 MR. MOORE: Right.

7 THE COURT: Okay. You may proceed on that.

8 MR. McMASTER: I could make it easy for Mr. Moore.

9 MR. MOORE: Okay.

10 MR. McMASTER: Judge, with respect to the jail  
11 calls, the State does not intend to utilize any of the  
12 jail calls in its case in chief.

13 I can't speak for rebuttal, only because I don't  
14 know for sure what the Defense case is going to be yet.

15 THE COURT: Okay. So, Mr. Moore, are you happy with  
16 that or --

17 MR. MOORE: I don't know if happy would exactly  
18 describe it, but I accept that and I understand that.

19 THE COURT: Okay. You think that's a better word,  
20 I'll accept your amendment to -- so, I'll put the Court  
21 took no action as the State does not intend to use the  
22 recorded jail calls in their case in chief.

23 Okay. The next motion that I have, that I call  
24 Number 43, is Motion to Compel State to Identify  
25 Materials of Which the State Intends to Make Use at

1 Trial.

2 MR. MOORE: To be more specific, recently the State  
3 disclosed on December 27th, 71 pages of materials,  
4 handwritten, taken from Mr. Bradley's cell, mostly  
5 illegible. I've tried to read it to try to make sense  
6 out of it, and we're asking for guidance from the State  
7 as to what portions of that, if any, the State intends  
8 to use.

9 In our view, it does not comply with the Rules of  
10 Discovery if all we're given is a large volume of mostly  
11 undecipherable, illegible, handwritten documents of the  
12 Defendant's, that the use of which is not obvious even  
13 after a failed attempt to read what's in it.

14 So, if the State intends to use that, we would ask  
15 that the State be required to state what portions of  
16 those documents the State intends to use.

17 THE COURT: Okay. Response from the State.

18 MR. McMASTER: Judge, I met with Mr. Moore in my  
19 office and I showed him the State's copies of the same  
20 documents. I got the impression that the State's copies  
21 are not much better in quality than the copies that he  
22 has been provided. However, I have welcomed him to come  
23 to my office at any time that he's able and look through  
24 the stuff that I have.

25 With respect to those documents, I believe it's  
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1 clear from the discovery submission, those are documents  
2 that were removed from Mr. Bradley's jail cell, copied  
3 by --

4 THE COURT: Okay. There's lots of noise; I need to  
5 be able to hear, with all due respect.

6 Okay.

7 MR. McMASTER: Those are documents that were removed  
8 from Mr. Bradley's jail cell, and I believe copied by  
9 the Seminole County Sheriff's Office and provided to our  
10 office.

11 THE COURT: Okay.

12 MR. McMASTER: We in turn have provided them to the  
13 Defense.

14 How we intend to use them at this point is  
15 uncertain. It does appear from the communications that  
16 we have had with our potential experts that they may be  
17 materials that the experts would like to look at in  
18 making their determinations about the issues regarding  
19 Mr. Bradley's psychological issues and his ability to  
20 waive Miranda rights.

21 There are some additional materials in there that  
22 appear to be in the form of a communication, at least an  
23 attempted communication, from Mr. Bradley to others, to  
24 pass along a potential defense in this case. And  
25 whether we actually use those materials or not depends

1 in large part on the Defense tactic and the defenses  
2 that they raise during the State's case in chief.

3 So, with respect to what I refer to as a journal,  
4 but it appears to be a handwritten notebook series of  
5 pages, that primarily would be background material for a  
6 psychologist. The State doesn't see any relevance to  
7 the particular issues in this case to introducing that.

8 With respect to what we consider to be an attempt  
9 to manipulate witness testimony, that could be presented  
10 either in the case in chief or in rebuttal.

11 THE COURT: Mr. Moore, I don't know what else you  
12 would require the State to do other than the disclosure  
13 that they've just made. I don't know what else you're  
14 requesting.

15 MR. MOORE: You know, after that, at least that  
16 gives us an idea. So, I think that's about all that we  
17 can ask at this point.

18 THE COURT: Okay. Well, I think they've given you  
19 the material, the copies that they have. I'm going to  
20 deny this, but if we need to readdress it, I'll  
21 readdress it. But I'm going to deny it.

22 MR. MOORE: Denied without prejudice.

23 THE COURT: I'll even put denied without prejudice  
24 so there's no misunderstanding.

25 Okay. Number 44 I show as your first Motion in  
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1 Limine. Looks like there's another Motion in Limine.  
2 This Motion in Limine -- I have Motion in Limine Number  
3 1 and Motion in Limine Number 2. So, this is Number 1.

4 MR. McMASTER: What number do you have that as,  
5 Judge, 44?

6 THE COURT: This is 44, and this is the Opinion  
7 Testimony by any Witness that the Defendant or the  
8 Driver of any Vehicle in Which the Defendant was a  
9 Passenger Intended to Run Over Law Enforcement Officers.

10 And then, Number 2, Other Matters and Grounds Will  
11 be Argued at Pretrial.

12 MR. MOORE: Okay. So, the Motion in Limine to  
13 Prohibit Testimony by any Witness of the Defendant or  
14 any Driver of the Vehicle in which the Defendant was a  
15 Passenger Intended to Run Over Law Enforcement Officers.  
16 Of course, the witnesses can testify about what they  
17 saw, but in terms of the witnesses opining or  
18 speculating about the thought process of the driver of  
19 the car, that would be opinion testimony and would be  
20 inadmissible.

21 I mean, unless they're expert witnesses and they  
22 are qualified to render such an opinion, it's  
23 speculation, and because of that, it's inadmissible.

24 What is seen, what is heard is certainly relevant  
25 and certainly admissible if relevant.



1 THE COURT: Hear response from the State.

2 MR. McMASTER: Judge, I frankly still am not quite  
3 sure where the information came from that either the  
4 Defendant or any driver of that particular vehicle on  
5 the day of March 6th of 2012, intended to run over law  
6 enforcement officers.

7 The only possible place that could apply to the  
8 facts as I understand them would be as the vehicle was  
9 being pursued from the Janewood Drive address of Mr.  
10 Webber, and then ultimately ended up in the ditch.  
11 During that time period it was driving erratically, did  
12 leave the roadway. However, it appears to me from the  
13 information that I've read that was more in an attempt  
14 to avoid the stop-sticks than to attempt to run over any  
15 law enforcement officers.

16 The short version is, the State does not have a  
17 theory that Mr. Bradley or anyone intended to run over  
18 any law enforcement officers during that chase. He's  
19 not been charged with aggravated assault or aggravated  
20 battery on a law enforcement officer. We do not intend  
21 to elicit any testimony from any of the witnesses that  
22 that was the intent.

23 THE COURT: Okay. So, I'm going to grant the motion  
24 with regard to Number 44.

25 MR. MOORE: And ask that --  
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1 THE COURT: They can obviously testify as to what  
2 they observed, but they cannot testify as to what was  
3 the intent.

4 MR. MOORE: My concern is, because it came out in  
5 depositions from some of the witnesses, that they're  
6 going to -- even though they're asked a question about  
7 what did you see, that doesn't invite that response,  
8 it's going to come out. And so, they need to be  
9 instructed not to let that part, unless it's  
10 specifically requested and ruled in advance it was  
11 relevant and admissible, that they not testify about  
12 that.

13 THE COURT: They can testify as to what they  
14 observed, not to what they believe the intent was.

15 MR. MOORE: Yes.

16 THE COURT: Okay. Number 44 is Motion in Limine  
17 Number 2, that's Number 44 -- or that's Number 45,  
18 sorry. Number 45, Mr. Moore.

19 MR. MOORE: Motion to Instruct the Witnesses to  
20 Control Their Emotions. They're human, there's close,  
21 interpersonal relationships with Deputy Pill, but as I  
22 said in an earlier motion, the facts and the law need to  
23 be what the jury relies upon. And to the extent that it  
24 can be done, that the witnesses be encouraged, be  
25 instructed, to control their testimony so that they are

1 able to control their emotions.

2 THE COURT: Okay. Response from the State.

3 MR. McMASTER: Judge, that's something we do pretty  
4 much -- at least I do -- in pretty much every trial that  
5 I have. I ask the witnesses to be professional, to  
6 control their emotions and to behave appropriately on  
7 the stand.

8 Obviously there are going to be some strong  
9 emotions in this case. Whether the witnesses are going  
10 to be able to do it or not is a different thing, but  
11 certainly the State has no problem in conveying to our  
12 witnesses that they are to attempt to be as professional  
13 as possible.

14 THE COURT: The State's Motion Number 45, Motion in  
15 Limine Number 2, is granted.

16 Then I have Number -- what I have is Number 46.  
17 Motion in Limine Uniform Police Presence in the  
18 Courtroom.

19 MR. MOORE: Mr. Pirrolo's going to present that  
20 motion.

21 THE COURT: Okay.

22 MR. PIRROLO: Good afternoon, Your Honor.

23 THE COURT: Good afternoon.

24 MR. PIRROLO: Judge, I cited a couple of cases  
25 within the motion. I have them for the Court and for

1 the State, as well.

2 May I approach?

3 THE COURT: Yes, you may.

4 MR. PIRROLO: Judge, there's also a copy of the  
5 Brevard County Sheriff's Office Procedure as it is  
6 specific to uniforms and when on-duty and off-duty  
7 police officers within the Brevard County Sheriff's  
8 Office are allowed to use them.

9 Judge, our concern is going to be that throughout  
10 this trial there will be a large law enforcement  
11 presence in the courtroom, meaning in the gallery,  
12 watching the trial occur.

13 Obviously BCSO is the agency involved in the case,  
14 as a matter of Deputy Pill, as a matter of all the --  
15 the majority of the law enforcement personnel that  
16 investigated the case are Brevard County Sheriff's  
17 Office. Melbourne Police Department was involved, as  
18 well. The State Troopers were involved, as well.

19 So, obviously the ones that are being called in as  
20 witnesses, they will be sequestered; that's not the  
21 concern. The concern is that throughout the trial,  
22 whether it's three weeks, four weeks, they will come in  
23 and observe, and we reasonably will assume that they  
24 will be sitting behind the State and pretty much take up  
25 a large portion on that side of the courtroom.

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1           What that does, Judge, it unfairly prejudices Mr.  
2 Bradley. The jurors are always observing during the  
3 trials, every trial I've been a part of, as focused as  
4 they are on the witness, they hear the door open, they  
5 turn and they see who comes into the courtroom. They  
6 observe that. They will see whether it's two officers  
7 or 30, they will acknowledge that. And in a way it  
8 conveys a message, an improper message to the jury.

9           And two of the cases that I've provided talk about  
10 that. The first one is Shootes, it's S H O O T E S,  
11 versus State, decision out of the first DCA of Florida,  
12 2009.

13           And what happened in this case, it wasn't the  
14 entire trial, this was just on the last day. The last  
15 day of trial, it was an aggravated assault on a police  
16 officer. The last day of trial, they moved the trial to  
17 a bigger courtroom because they were expecting more  
18 people to come in for closing argument, and what  
19 transpired during closing arguments was that large  
20 numbers of police officers came in to listen to the  
21 closing arguments.

22           The record was clear of the amount of officers that  
23 came in. It was clear that they were all either in full  
24 uniform or at least some clothing that identified them  
25 as law enforcement. Whether it was a T-shirt in some

1 instances, or a polo shirt that indicated they were  
2 from the Jacksonville Sheriff's Office, but regardless,  
3 it was without question they were employed one way or  
4 another with the Sheriff's Office in Jacksonville.

5 And the Court found it to be prejudicial, and it  
6 reversed the conviction. It deprived the Defendant, in  
7 that case Mr. Shootes, a fair trial, his due process  
8 rights were violated, and on Page 4 of the opinion, on  
9 the right-hand column, it talks about how the judges are  
10 not free to disregard factors external to the evidence,  
11 such as the atmosphere in and around the courtroom,  
12 which may influence a jury's verdict.

13 The Sixth Amendment imposes upon Trial Courts an  
14 affirmative obligation to minimize any risk of  
15 unacceptable factors affecting the accused right to a  
16 fair trial. They cite a Federal case which I have, as  
17 well included in the packet, that is the Woods case,  
18 Woods versus Dugger, that stemmed from the Middle  
19 District of Florida and then went up to the 11th Circuit  
20 of Appeals in Atlanta.

21 But it also indicates that the Courts have an  
22 obligation to insure that the trial's a fair process and  
23 an obligation to protect jurors from any possibility of  
24 influence or intimidation by the appearance of a  
25 uniformly outfitted sea of spectators.

1           Conversely, Judge, in a Southern District of  
2 Florida case, U.S. versus Yahweh, which was also cited  
3 in this opinion and the Shootes opinion, there was a  
4 pretrial order that allowed 60 supporters of multiple  
5 defendants that they could attend the jury trial, but  
6 they were not to be dressed in white turbans or flowing  
7 robes that were indicative of the Defendant's religious  
8 group.

9           So, in this case, Judge, first of all, with all due  
10 respect, if the officer is on duty, they need to be on  
11 duty; whether it's patrolling, whatever their duty is  
12 for the Sheriff's Department or Melbourne Police  
13 Department, that's what they should be doing when  
14 they're on duty.

15           If they are off duty, and that's where the  
16 procedure printout that I've given to the Court  
17 indicates is on Page 2 of that, Paragraph E, Number 2,  
18 employees will wear only the uniform specified for their  
19 assignment. Number 3, employees may wear his or her  
20 prescribed uniform during special assignments or  
21 functions as authorized with the employee's supervisor.

22           An example of such functions are parades, approved  
23 civic functions, law enforcement-related funerals,  
24 etcetera.

25           A trial is not a parade; it's clearly not an  
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1 approved civic function.

2 If the officer's off, if he or she has a day off,  
3 and they come in in street clothes, no polo shirts, no  
4 hats, no T-shirts that show they are a member of the  
5 Brevard County Sheriff's Office or Melbourne Police  
6 Department or any other law enforcement agency,  
7 obviously the Court cannot stop them from coming in.

8 We are concerned is, we're going to have a sea of  
9 green or blue or both in the courtroom day in and day  
10 out. It doesn't have to be the entire day, but the  
11 jurors will see that. They will observe that each time  
12 the door opens, they hear the door open, and as the  
13 cases get into, it's sending a message to the jurors.  
14 And it's a message that should not be sent to the  
15 jurors.

16 The only message that should be sent to the jurors  
17 is that they need to weigh the evidence that comes from  
18 the witness stand and from exhibits, and rely their  
19 verdict on that, not some outside presence.

20 Staying with the Shootes case, Judge, on Page 5 of  
21 the opinion, it talked about how there was a substantial  
22 number of the uniformed officers and they were not  
23 present for preserving the order in the courtroom. So,  
24 the Court can limit that. We're not, again, asking the  
25 deputies that work for the court, that will be in this



1 courtroom, that they can't wear their uniforms. We're  
2 just asking for just outside police officers that have  
3 nothing to do with protecting the courtroom or the  
4 Judge. It's just outside personnel is what this is  
5 specifically geared to.

6 And again, the Court specifically says it's  
7 preserving an order in the courtroom or to provide  
8 testimony in proceedings, that jury's susceptible to the  
9 impression that the officers are there to communicate a  
10 message to the jury. And they cite the Woods case, as  
11 well, the Federal Court case.

12 So, the Courts have understood that that's what  
13 occurs to the jury. I mean, I'm sure the officers  
14 aren't here intentionally trying to spread that message,  
15 but it's a message that the jurors have gotten in other  
16 cases, and the Courts, definitely the District Court of  
17 Appeals in Florida and the Federal Appellate Courts,  
18 have understood it's just human nature.

19 And again, it states that the only message that  
20 should be sent should come from the Judge and from the  
21 evidence presented and not from any other outside  
22 influences.

23 The Federal case, Judge, that I provided, as well,  
24 Woods versus Dugger, it is 923 Federal 2d 1454. Again,  
25 it is a decision that started in the Middle District of

1 Florida. And the Court ruled that the hostile  
2 atmosphere prevented the Defendant from obtaining a fair  
3 trial.

4 This occurred up near Starke. They actually had  
5 considerable testimony indicating that almost an  
6 overwhelming majority of that town is employed by the  
7 prison in one way or another; whether corrections  
8 officers or other employment within the prison system  
9 there in Starke. And again, that was in the Woods case,  
10 a corrections officer was killed while doing his duties  
11 in the prison.

12 So, clearly that had a large number of law  
13 enforcement personnel at the trial, viewing it, and they  
14 were wearing various uniforms, whether it was law  
15 enforcement or showing that they were somehow employed  
16 by the Department of Corrections in that area.

17 They came up with a test that the Court needs to  
18 look at, a test as to look at whether it's inherent  
19 prejudice, it's not whether the jurors actually  
20 articulate a consciousness of some prejudicial effect,  
21 but rather whether an unacceptable risk is presented of  
22 impermissible factors coming into play.

23 It requires that there first be a test whether  
24 there is an impermissible factor coming into play, and  
25 second whether it poses an unacceptable risk. And

1 clearly there is an unacceptable risk. It's the  
2 probability that the jurors will be given this message  
3 they should not be given.

4 There's no reason to have uniformed law enforcement  
5 in the gallery of the courtroom. Again, if they are  
6 going to be testifying, then they're going to be coming  
7 in one-by-one.

8 We already have discussed the security detail for  
9 the courtroom, so we're not talking about those people.  
10 These are just the outside people.

11 And Judge, it is not far fetched, I believe this is  
12 very reasonable. We all understand and we respect how  
13 law enforcement officers are with each other. They are  
14 very close. And there is a brotherhood that occurs with  
15 them working with each other, regardless if it's ten  
16 days or ten years. They are very close. And it's  
17 understandable that a fellow law enforcement officer  
18 would want to come in here and watch portions of the  
19 trial. And we're not saying that they shouldn't be  
20 allowed in here. But we're saying that they should not  
21 come in in full uniform or somehow wearing something  
22 that signifies to the jurors that I'm a law enforcement  
23 officer or I work with law enforcement.

24 There have been cases where, depending on the  
25 victim in the case, a lot of people tend to start  
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1 wearing buttons or T-shirts, and that's been regulated.  
2 You can't keep the people out. But you can keep some of  
3 those things from happening and improperly influencing a  
4 jury.

5 There is no State interest here, a reason why the  
6 State needs the law enforcement personnel behind them.  
7 It's clearly going to add to the sympathies,  
8 impermissibly to the sympathies of the jury. It's  
9 almost going to be a silent victim impact statement  
10 given throughout the whole trial.

11 One law enforcement officer in after another,  
12 jurors are going to pick up on that. Obviously see that  
13 this person is missed and understandably and rightfully  
14 so.

15 But again, we need to make sure, and this Court  
16 needs to make sure that Mr. Bradley gets a fair trial.  
17 And in this particular instance, the only way I can see  
18 around it, is if the Court instruct the State that they  
19 instruct their law enforcement officers that if they're  
20 going to come to watch, to observe, that they be dressed  
21 in street clothes. No one can tell if they're a law  
22 enforcement officer or not.

23 And again, we know that's possible because part of  
24 our agreement with the security detail in here, we've  
25 worked that out. That's not completely unfair.

1           And again, with the procedures that I've given to  
2 the Court that are outlined by the Sheriff's Department,  
3 I think while they're on duty or off duty, there's only  
4 limited times that they can wear them. This isn't one  
5 of those times that's outlined by the Sheriff. And  
6 again, if they are on the clock, then they are out on  
7 the road or doing whatever other duties that they need  
8 to be doing.

9           THE COURT: Okay. Response from the State.

10          MR. McMASTER: Judge, first of all, the State has  
11 little or no control over who comes into the courtroom  
12 to watch the proceedings. Obviously we have control  
13 over our witnesses, but as I understand the Defense  
14 argument, they're not concerned about the witnesses  
15 appearing in uniform, since they would be sequestered.

16          THE COURT: It would pertain to the witnesses and  
17 the security personnel for the courtroom.

18          MR. McMASTER: Yes, ma'am.

19          To the extent that the Defense is aiming their  
20 concerns at some sort of policy by either the Sheriff's  
21 Office or the Melbourne Police Department or the Florida  
22 Highway Patrol or whatever, of attempting to amass a  
23 uniform presence of officers for the purposes of this  
24 trial, and attempting to communicate a message to the  
25 jurors, it seems to me their motion should be directed

1 to those agencies, not to the State. And that the  
2 agencies should be given an opportunity to appear and  
3 present any position that they think might be  
4 appropriate.

5 Having said that, it's clear from the cases that  
6 the Defense has cited, that this Court certainly has the  
7 ability and the power to control the nature and the  
8 makeup of the persons watching this trial, to the extent  
9 that any of their clothing is going to attempt to  
10 communicate any kind of message. So, that part is  
11 certainly up to the Court.

12 I would suggest that it's something that's probably  
13 going to have to be handled on a day-by-day basis,  
14 because I don't think there's any way of knowing who is  
15 going to try to come to the courtroom to watch the  
16 proceedings, nor any way of knowing who's going to get  
17 here first and actually is able to get in.

18 As the Court well knows, most of the trials that we  
19 conduct here have few, if any, observers, other than  
20 perhaps some of the victims that wish to sit through and  
21 some of the courthouse regulars, but most of them can be  
22 counted on one hand as to who's going to be here.

23 So, I'll leave it to the Court's discretion to  
24 fashion a manner in which to control the crowd dressing.  
25 And as I said, if the Court wishes or it has some

1 concern that there's some sort of unified response by  
2 any of the law enforcement agencies, I would request  
3 that the agencies be given notice of a hearing and  
4 notice to appear at the non-death-penalty hearing time.

5 THE COURT: Mr. Pirrolo, my concern is I can direct  
6 the State -- because the Motion in Limine at this point,  
7 I only have the jurisdiction to direct the State that  
8 with regard to off-duty police officers. If you want it  
9 to expand to Brevard County Sheriff's Office and to  
10 expand to the Melbourne Police Department, then I can  
11 direct Mr. McMaster to advise them, each agency, that  
12 off-duty police officers are not to wear their uniforms  
13 if they intend to observe this trial.

14 I mean, are you satisfied with that or do you want  
15 to have a hearing where we notify Melbourne Police  
16 Department and notify Brevard County Sheriff's Deputies?

17 You might want to push that button, just for  
18 purposes of not being recorded. Normally we have it on  
19 hearing, but it's on the record.

20 Nope, they just moved it to hearing, so you won't  
21 be recorded.

22 MR. PIRROLO: Judge, I believe what the Court  
23 thought about having Mr. McMaster advise those agencies  
24 would be fine. But the other concern we have, as well,  
25 and maybe the courtroom deputies can maybe assist as it

1 goes on.

2 This came up at the last hearing we had last week,  
3 about how far the media attention has been with this.  
4 At the beginning of the case I had filed a motion that  
5 pertained to the media in getting some discovery in the  
6 case. And after that hearing I supplemented the record  
7 with some CDs, DVDs that contained the media reports and  
8 a pretty large stack of media reports from around the  
9 country. And they went as far west as I believe Dallas  
10 or Houston, Texas, and as far north as Buffalo, New  
11 York, and as far south obviously as Miami, or I think  
12 maybe there was even a story in the Keys.

13 So, there is a concern that law enforcement could  
14 come up from -- could come from Orlando, they could come  
15 from Dade County, from Broward County, to see this  
16 happen, to watch the trial.

17 So, perhaps at the right times, if the courtroom  
18 deputies start seeing law enforcement personnel walk  
19 into the courtroom -- I know in every trial, one of the  
20 first questions they ask anyone walking into a trial is,  
21 are you a witness in this case, what are you doing here,  
22 because they want to make sure that the Rule of  
23 Sequestration doesn't get violated. So, if they see  
24 someone in law enforcement uniform or law enforcement --  
25 some sort of law enforcement insignia, that they ask,



1 are you a witness in this case, and if you are then you  
2 shouldn't be in here. And if they're not, probably  
3 bring it to the Court's attention, because this is a  
4 concern we have and I think it's a very legitimate  
5 concern.

6 And again, we're not faulting them for wanting to  
7 come in here and watch the trial. But there's got to be  
8 a balance here, that we've got to prevent a jury of  
9 seeing five officers, ten officers. I mean, I can't  
10 tell the Court how many officers are going to be here  
11 because we don't know what's going to happen on that  
12 particular day.

13 So, I think it would be fine with the Court giving  
14 sort of an Order to Mr. McMaster that the State  
15 Attorney's Office at least give notice to the Brevard  
16 County Sheriff's Office. I think it needs to go to all  
17 the agencies in the county. Melbourne Police  
18 Department, Florida Highway Patrol was involved when the  
19 vehicle went into the ditch. They were on scene.  
20 There's a video that's got numerous Florida Highway  
21 Patrol vehicles depicted in the video. Obviously West  
22 Melbourne Police Department, Palm Bay Police Department,  
23 Titusville Police Department, all the police agencies  
24 within the county.

25 And then at least let the courtroom deputies be  
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1 vigilant during the trial. And if one of us misses  
2 that, at least the courtroom deputies notify the Court.

3 I know we're going to try our best to keep eyes on  
4 everyone, but our focus is always on the witness on the  
5 stand. And it's going to take away from our focus on  
6 the witness and testimony that's coming out, and having  
7 to turn our backs every time the doors open and make  
8 sure that law enforcement personnel is not coming in to  
9 sit down and watch.

10 So, I think we can try to alleviate the problem  
11 both by the Court's suggestion and hopefully the  
12 courtroom deputies kind of keeping an eye on it and  
13 letting the Court know. Or maybe even directing the  
14 personnel to say, well, if you're not a witness, we may  
15 not be able to have you in here dressed in that uniform  
16 because of the concerns that we have for the jury.

17 THE COURT: I think what I can do is this. I will  
18 issue as part of this Order, a policy that off-duty  
19 police officers who are not witnesses and who are not --  
20 actually, because off-duty police officers --

21 MR. McMASTER: Can be witnesses.

22 THE COURT: -- excluding witnesses --

23 MR. MOORE: And security.

24 THE COURT: -- and security personnel in the  
25 courtroom, are directed not to wear their uniforms if

1 they want to observe this trial.

2 MR. MOORE: Or any law enforcement regalia; that  
3 could include T-shirts --

4 THE COURT: Or anything with law enforcement  
5 insignia on it.

6 MR. PIRROLO: Right. I would say insignia. I know  
7 every police department has a polo shirt that's got the  
8 insignia.

9 THE COURT: That would have the insignia on it. I  
10 would think anything, hat.

11 Now, having said that, I'll direct Mr. McMaster to  
12 inform the law enforcement agencies in Brevard County of  
13 this policy.

14 MR. McMASTER: Judge, you get me the Order about  
15 what you require and I'll be happy to communicate that  
16 to the law enforcement agencies. I'm not going to tell  
17 them what they can and can't wear.

18 THE COURT: Well, if you want to know the truth, I'm  
19 not sure I can tell them that either. So, I will --  
20 that's why I'm making it a policy, and I will direct my  
21 deputies to observe that. They'll ask if they're  
22 witnesses. If they say no, they can say to them, that  
23 it's a policy of Judge Reinman during these proceedings  
24 that if you are here to observe, that you not wear your  
25 uniform.

1           Now, from there, if they insist on wearing the  
2 uniform, we'll have to have -- and they may have a  
3 constitutional right to wear their uniform in here, I'm  
4 not sure -- but we'll have to readdress that if that  
5 becomes an issue.

6           I think if one or two decide that they're going to  
7 do that anyway, I'm not sure that would be an issue.  
8 But if ten or 20 or 30 decided they were going to do  
9 that, we'll have to readdress it.

10           But at this time, that's how I'll handle that.  
11 I'll do some other research on this issue and see if  
12 there's -- if I know of any other way it's been handled  
13 in other courtrooms with regard to that.

14           But I'll issue a policy for purposes of this trial.  
15 Not a general policy, but for purposes of this trial.  
16 And I will direct my court deputies to, if they get in  
17 and they're sitting in, to make that request, that it is  
18 the policy of this courtroom not to wear their law  
19 enforcement uniform or anything that identifies them as  
20 law enforcement.

21           Okay. It looks like we've addressed everything  
22 that's pending at this time; is that correct?

23           MR. McMASTER: I believe so.

24           MR. MOORE: Yes.

25           THE COURT: We have the other hearing set for  
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1 February the 20th at 3:00 p.m. I will do a pretrial at  
2 that time. If you want additional -- I'm requesting if  
3 you want additional motions to be heard, if you'll  
4 notice them for that date, do a Notice of Hearing, and  
5 send a copy to Ms. Billie.

6 What I'm fearful of is that things are getting  
7 filed and I'm not sure they're getting filed to because  
8 I'm not necessarily seeing a copy, or a copy's not  
9 necessarily getting sent to me. So, if you do a Notice  
10 of Hearing and send that to me, I'll know to pull up the  
11 motion and review the motion.

12 Okay. And I'll ask both sides to do that.

13 MR. McMASTER: Yes, ma'am.

14 THE COURT: Okay. Anything else we need to address  
15 for today?

16 MR. McMASTER: No, Your Honor.

17 THE COURT: All right. Court is adjourned. Thank  
18 you. Court is adjourned until 9:00 o'clock tomorrow for  
19 calendar call.

20 \* \* \* \* \*

21 (The digital proceedings were concluded at  
22 5:26 p.m.)

23 \* \* \* \* \*

C E R T I F I C A T E

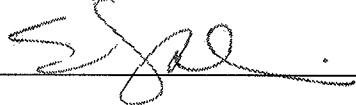
STATE OF FLORIDA )

COUNTY OF BREVARD)

I, Sheryl J. Dixon, Transcriptionist and Notary Public, do hereby certify that I was authorized to and did transcribe the foregoing proceedings via a digital recording; that the transcript is a true and correct transcription to the best of my ability.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 24th day of June, 2014.



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Sheryl J. Dixon  
Transcriptionist  
Notary Public - State of Florida  
My Commission Number EE864441  
Expires May 5, 2017

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