

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

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

Case # 05-2012-CF-035337-AXXX-XX

Document Page # 429



23131317

STATE OF FLORIDA,

Plaintiff,

versus

BRANDON LEE BRADLEY

Defendant,

ORIGINAL

VOLUME XIV OF XV

TRANSCRIPT OF DIGITAL RECORDED JURY TRIAL
SPENCER HEARING AND SENTENCING

The transcript of the Digital Recorded
Proceedings taken in the above-styled cause, at the Moore
Justice Center, 2825 Judge Fran Jamieson Way, Viera,
Florida, on the 18th, 19th, 20th, 21st, 26th, 27th, 28th
and 31st day of March, the 1st, 3rd, 4th and 8th day of
April, 2014 (Trial), the 5th day of June, 2014 (Spencer
Hearing), and the 27th day of June, 2014 (Sentencing),
before the Honorable Morgan Reinman.

RYAN REPORTING
REGISTERED PROFESSIONAL REPORTERS

1670 S. FISKE BOULEVARD

SCOTT ELLIS
2014 JUL 25 A 11:47
FILED IN TRIAL
CLERK OF CIR. CT.
BREVARD CO. FLA.

A P P E A R A N C E S

THOMAS BROWN, ESQ.,
and
JAMES MCMASTER, ESQ.,
Assistant State Attorneys
State Attorney's Office
2725 Judge Fran Jamieson Way
Building D.
Viera, Florida 32940

Appearing for
Plaintiff

J. RANDALL MOORE, ESQ.,
MICHAEL PIROLO, ESQ.,
and
MARK LANNING, ESQ.,
Assistant Public Defender
Public Defender's Office
2725 Judge Fran Jamieson Way
Building E
Viera, Florida 32940

Appearing for
Defendant

Brandon Lee Bradley, Defendant, present

* * * * *

I N D E X

PROCEEDINGS:

March 18, 2014	22
March 19, 2014	275
March 20, 2014	465
March 21, 2014	755
March 26, 2014	990
March 27, 2014	1293
March 28, 2014	1479
March 31, 2014	1570
April 1, 2014	1899
April 3, 2014	2076
April 4, 2014	2475
April 8, 2014	2651
June 5, 2014	2860
June 27, 2014	2876

MOTION TESTIMONY:

PLAINTIFF'S WITNESSES:

ROBERT MARKS: (Proffer)

Direct Examination by Mr. McMaster	24
Cross Examination by Mr. Moore	35

ANDRIA KERCHNER: (Proffer)

Direct Examination by Mr. McMaster	43
Cross Examination by Mr. Moore	51

JEFFREY DIEGUEZ: (Proffer)

Direct Examination by Mr. McMaster	58
Cross Examination by Mr. Moore	66

TRIAL

JURY SWORN:	140
-------------	-----

I N D E X

I N D E X

1		
2	RULE OF SEQUESTRATION:	142
3	OPENING STATEMENT:	
4	By Mr. McMaster	156
5	By Mr. Pirolo	189
6	PLAINTIFF'S WITNESSES:	
7	CHARLES COLON:	
8	Direct Examination by Mr. McMaster	224
9	ROBERT MARKS:	
10	Direct Examination by Mr. McMaster	237
11	JAMES SEATON:	
12	Direct Examination by Mr. McMaster	249
13	Voir Dire Examination by Mr. Moore	253
14	Continued Direct Examination by Mr. McMaster	257
15	AGENT CRAIG CARSON:	
16	Direct Examination by Mr. McMaster	260
17	CHRISTOPHER MONTESANO:	
18	Direct Examination by Mr. Brown	290
19	Cross Examination by Mr. Pirolo	298
20	Redirect Examination by Mr. Brown	302
21	ANDREW JORDAN:	
22	Direct Examination by Mr. Brown	303
23	Cross Examination by Mr. Pirolo	343
24	Redirect Examination by Mr. Brown	348
25	Recross Examination by Mr. Pirolo	349

I N D E X

I N D E X

PLAINTIFF'S WITNESSES:

VANESSA MCNERNEY:

Direct Examination by Mr. Brown	351
Cross Examination by Mr. Pirolo	369
Redirect Examination by Mr. Brown	374

TAMMY BROWN:

Direct Examination by Mr. Brown	376
Cross Examination by Mr. Lanning	383
Redirect Examination by Mr. Brown	384
Recross Examination by Mr. Lanning	384

MOHAMMAD MALIK:

Direct Examination by Mr. Brown	385
Cross Examination by Mr. Pirolo	398

AGENT CRAIG CARSON:

Direct Examination by Mr. McMaster	428
Cross Examination by Mr. Moore	435
Redirect Examination by Mr. McMaster	437

SERGEANT DARRYL OSBORNE:

Direct Examination by Mr. McMaster	438
------------------------------------	-----

MAJOR BRUCE BARNETT:

Direct Examination by Mr. McMaster	446
------------------------------------	-----

AGENT BRIAN STOLL:

Direct Examination by Mr. McMaster	451
Cross Examination by Mr. Moore	454

I N D E X

I N D E X

PLAINTIFF'S WITNESSES:

SERGEANT TERRANCE LAUFENBERG:

Direct Examination by Mr. McMaster	455
Continued Direct Examination by Mr. McMaster	477

AGENT FRANCES DUFRESNE:

Direct Examination by Mr. McMaster	481
------------------------------------	-----

CORPORAL BRAD CERVI:

Direct Examination by Mr. McMaster	488
Cross Examination by Mr. Lanning	495
Redirect Examination by Mr. McMaster	499
Recross Examination by Mr. Lanning	501

DEPUTY JAMES TROUP:

Direct Examination by Mr. McMaster	502
Voir Dire Examination by Mr. Moore	523
Continued Direct Examination by Mr. McMaster	532

AGENT DON REYNOLDS:

Direct Examination by Mr. McMaster	551
Cross Examination by Mr. Lanning	567
Redirect Examination by Mr. McMaster	572
Recross Examination by Mr. Lanning	575

JEFFREY DIEGUEZ:

Direct Examination by Mr. McMaster	577
Cross Examination by Mr. Lanning	583
Redirect Examination by Mr. McMaster	643
Recross Examination by Mr. Lanning	644

I N D E X

I N D E X

PLAINTIFF'S WITNESSES:

TRISTA LOWMAN:

Direct Examination by Mr. McMaster	647
Cross Examination by Mr. Pirolo	653

DEPUTY VICTOR VELEZ:

Direct Examination by Mr. McMaster	656
------------------------------------	-----

DETECTIVE GREG GUILLETTE:

Direct Examination by Mr. Brown	662
---------------------------------	-----

ANDRIA KERSCHNER:

Direct Examination by Mr. Brown	676
Cross Examination by Mr. Pirolo	692
Redirect Examination by Mr. Brown	739
Recross Examination by Mr. Pirolo	746

OFFICER DERRICK MIDDENDORF:

Direct Examination by Mr. McMaster	758
------------------------------------	-----

SERGEANT MICHAEL CASEY:

Direct Examination by Mr. McMaster	769
------------------------------------	-----

GERARD WEBER:

Direct Examination by Mr. McMaster	781
------------------------------------	-----

SERGEANT TREVOR SHAFFER:

Direct Examination by Mr. McMaster	793
------------------------------------	-----

I N D E X

I N D E X

PLAINTIFF'S WITNESSES:

DETECTIVE CHAD COOPER:

Direct Examination by Mr. McMaster	830
Cross Examination by Mr. Lanning	851

SERGEANT JEFF RAU:

Direct Examination by Mr. McMaster	854
Cross Examination by Mr. Moore	862

OFFICER JENNIFER AMNEUS:

Direct Examination by Mr. McMaster	864
------------------------------------	-----

MICHAEL RYLE:

Direct Examination by Mr. McMaster	872
------------------------------------	-----

ANDREA ZIARNO:

Direct Examination by Mr. Brown	890
---------------------------------	-----

CSI LISA CONNORS:

Direct Examination by Mr. McMaster	893
Cross Examination by Mr. Lanning	901
Redirect Examination by Mr. McMaster	903

CSI JENNIFER MILLER:

Direct Examination by Mr. McMaster	905
Cross Examination by Mr. Pirolo	915

I N D E X

I N D E X

PLAINTIFF'S WITNESSES:

CSI STEPHANNIE COOPER:

Direct Examination by Mr. McMaster	916
Cross Examination by Mr. Lanning	977
Redirect Examination by Mr. McMaster	985
Recross Examination by Mr. Lanning	987

AGENT DANIEL OGDEN:

Direct Examination by Mr. McMaster	993
------------------------------------	-----

OFFICER RON STREIFF:

Direct Examination by Mr. McMaster	997
------------------------------------	-----

AMY SIEWERT:

Direct Examination by Mr. McMaster	1024
------------------------------------	------

CST VIRGINIA CASEY:

Direct Examination by Mr. Brown	1053
Cross Examination by Mr. Lanning	1076

SERGEANT BLAKE LANZA:

Direct Examination by Mr. Brown	1081
Cross Examination by Mr. Pirolo	1086
Redirect Examination by Mr. Brown	1086

DEPUTY MICHAEL THOMAS:

Direct Examination by Mr. Brown	1088
Cross Examination by Mr. Moore	1091
Redirect Examination by Mr. Brown	1093
Recross Examination by Mr. Moore	1093

I N D E X

I N D E X

PLAINTIFF'S WITNESSES:

SAJID QAISER, M.D.:

Direct Examination by Mr. Brown	1102
Cross Examination by Mr. Moore	1129

AGENT WAYNE SIMOCK:

Direct Examination by Mr. Brown	1137
Cross Examination by Mr. Moore	1249
Redirect Examination by Mr. Brown	1279
Recross Examination by Mr. Moore	1285

AMANDA OZBURN: (Proffer)

Direct Examination by Mr. McMaster	1302
Cross Examination by Mr. Pirolo	1315

AMANDA OZBURN:

Direct Examination by Mr. McMaster	1327
Cross Examination by Mr. Pirolo	1332
Redirect Examination by Mr. McMaster	1343
Recross Examination by Mr. Pirolo	1343

CORY CRUMBLEY:

Direct Examination by Mr. Brown	1346
---------------------------------	------

STATE RESTS:	1372
--------------	------

MOTION FOR JUDGMENT OF ACQUITTAL:	1373
-----------------------------------	------

DEFENSE WITNESSES:

RAVEN DUROUSSEAU:

Direct Examination by Mr. Moore	1398
---------------------------------	------

I N D E X

I N D E X

DEFENSE WITNESSES:

DAVID MCGUINNESS:

Direct Examination by Mr. Moore	1426
Cross Examination by Mr. Brown	1429

LINDA SULLIVAN:

Direct Examination by Mr. Moore	1430
Cross Examination by Mr. McMaster	1452
Redirect Examination by Mr. Moore	1455
Recross Examination by Mr. McMaster	1457

OFFICER CASSANDRA WORONKA:

Direct Examination by Mr. Lanning	1503
Cross Examination by Mr. Brown	1505
Redirect Examination by Mr. Lanning	1505

DR. SUSAN SKOLLY-DANZIGER:

Direct Examination by Mr. Moore	1509
Cross Examination by Mr. McMaster	1544
Redirect Examination by Mr. Moore	1553

DR. JACQUELYN OLANDER:

Direct Examination by Mr. Moore	1593
Cross Examination by Mr. Brown	1672
Redirect Examination by Mr. Moore	1697

DEFENSE RESTS:	1720
----------------	------

RENEWED MOTION FOR JUDGMENT OF ACQUITTAL:	1720
---	------

I N D E X

I N D E X

STATE'S REBUTTAL WITNESSES:

DR. BRUCE GOLDBERGER:

Direct Examination by Mr. McMaster	1721
Cross Examination by Mr. Moore	1754
Redirect Examination by Mr. McMaster	1767

DR. PATRICIA ZAPF:

Direct Examination by Mr. Brown	1768
Cross Examination by Mr. Moore	1797
Redirect Examination by Mr. Brown	1839
Recross Examination by Mr. Moore	1843

STATE RESTS:	1852
--------------	------

RENEWAL MOTION FOR JUDGMENT OF ACQUITTAL:	1854
---	------

CHARGE CONFERENCE:	1857
--------------------	------

CLOSING ARGUMENTS:

By Mr. Brown	1903
By Mr. Lanning	1955
By Ms. McMaster	1973

JURY CHARGE:	1998
--------------	------

VERDICT:	2070
----------	------

JURY POLLED:	2072
--------------	------

PENALTY PHASE:

OPENING STATEMENT:

By Mr. Brown	2286
By Mr. Moore	2295

I N D E X

I N D E X

PLAINTIFF'S WITNESSES:

CHARLES COLON:

Direct Examination by Mr. McMaster 2303

GARY SHREWSBURY:

Direct Examination by Mr. McMaster 2308

Cross Examination by Mr. Pirolo 2315

OFFICER WILLIAM GLEASON:

Direct Examination by Mr. McMaster 2319

Voir Dire Examination by Mr. Pirolo 2324

JEREMY PILL:

Direct Examination by Mr. Brown 2325

STATE RESTS: 2328

MOTION FOR JUDGMENT OF ACQUITTAL: 2328

DEFENSE WITNESSES:

CASEY GREEN:

Direct Examination by Mr. Moore 2331

JULIE MARTIN:

Direct Examination by Mr. Moore 2338

I N D E X

I N D E X

DEFENSE WITNESSES:

DR. JOSEPH WU:

Direct Examination by Mr. Moore	2347
Cross Examination by Mr. McMaster	2431
Redirect Examination by Mr. Moore	2466

DR. JACQUELYN OLANDER:

Direct Examination by Mr. Moore	2487
Cross Examination by Mr. Brown	2499
Redirect Examination by Mr. Moore	2535
Recross Examination by Mr. Brown	2554
Further Redirect Examination by Mr. Moore	2556

CARRIE ELLISON:

Direct Examination by Mr. Moore	2566
Cross Examination by Mr. McMaster	2578
Redirect Examination by Mr. Moore	2580

LAWRENCE KEITH NELSON:

Direct Examination by Mr. Moore	2582
Cross Examination by Mr. Brown	2592
Redirect Examination by Mr. Moore	2593

ANTHONY NELSON:

Direct Examination by Mr. Moore	2594
---------------------------------	------

RONALD MCANDREW: (Proffer)

Direct Examination by Mr. Moore	2637
---------------------------------	------

DEFENSE RESTS: 2708

CHARGE CONFERENCE: 2658

I N D E X

I N D E X

CLOSING ARGUMENTS:

By Mr. McMaster	2708
By Mr. Moore	2751

JURY CHARGE:	2793
--------------	------

QUESTIONS:	2834
	2839
	2842

VERDICT:	2848
----------	------

JURY POLLED:	2849
--------------	------

SPENCER HEARING:	2860
------------------	------

PLAINTIFF'S WITNESSES:

BERNIE BOLTE:

Direct Examination by Mr. McMaster	2868
------------------------------------	------

BERRY BOLTE:

Direct Examination by Mr. McMaster	2870
------------------------------------	------

STEVEN PILL:

Direct Examination by Mr. McMaster	2871
------------------------------------	------

SENTENCING HEARING:	2876
---------------------	------

I N D E X

I N D E X

PLAINTIFF'S EXHIBITS:

NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
1	Arrest Warrant	A	232
2	Arrest Warrant	B	232
3	Arrest Warrant	C	232
4	Amended Arrest Warrant	D	234
5	Amended Arrest Warrant	E	234
6	Copy of Driver's License	F	236
7	Application	FZ	257
8	Photograph	DX	258
9	Diagram	H	292
10	Diagram	J	306
11	Registration Documents	AL	307
12	Photograph	DD	313
13	Photograph	DE	313
14	Photograph	K	322
15	Photograph	L	322
16	Photograph	M	322
17	Photograph	N	322
18	Photograph	O	322
19	Photograph	P	326
20	Photograph	Q	326
21	Photograph	R	326
22	Photograph	S	326
23	Photograph	T	326
24	Photograph	U	326
25	Photo Lineup Instructions	AF	339
26	Photo Lineup	AG	339
27	Photo Lineup	AH	339
28	Photo Lineup Instructions	Z	368
29	Photo Lineup	AA	368
30	Photo Lineup	AB	368
31	CD	I	392
32	List of Property	V	393
33	Photo Lineup Instructions	AI	396
34	Photo Lineup	AJ	396
35	Photo Lineup	AK	396
36	Photograph	GA	435
37	Photograph	AN	458
38	Photograph	AO	458

I N D E X

I N D E X

PLAINTIFF'S EXHIBITS:

NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
39	Photograph	AP	458
40	Photograph	AQ	458
41	Aerial Diagram	G	507
42	DVD	AT	531
43	DVD	AU	531
44	Photograph	FI	532
45	Phone Record	BJ	558
46	Diagram	AX	562
47	Photograph	AW	672
48	DISC	GB	672
49	Driver's License Photo	AM	785
50	Photograph	AY	788
51	Photograph	AZ	788
52	Photograph	BA	788
53	Photograph	BB	788
54	Photograph	BC	788
55	Photograph	BD	788
56	Photograph	BE	788
57	Photograph	BF	788
58	Photograph	BG	788
59	Photograph	BH	788
60	DVD	BL	841
61	DVD	BK	883
62	Medical Records	FG	893
63	Diagram	BZ	897
64	Diagram	BM	907
65	Photograph	BN	909
66	Photograph	BO	909
67	Photograph	BP	909
68	Photograph	BQ	909
69	Photograph	BR	909
70	Photograph	BS	909
71	Photograph	BT	909
72	Photograph	BU	909
73	Photograph	BV	909
74	Photograph	BW	909
75	Photograph	BX	909
76	Photograph	BY	909

I N D E X

I N D E X

PLAINTIFF'S EXHIBITS:

NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
77	Photograph	CC	922
78	Photograph	CD	922
79	Photograph	CE	922
80	Photograph	CF	922
81	Photograph	CG	922
82	Photograph	CH	922
83	Photograph	CI	922
84	Photograph	CJ	922
85	Photograph	CK	922
86	Photograph	CL	922
87	Photograph	CM	922
88	Photograph	CN	922
89	Photograph	CO	922
90	Photograph	CP	922
91	Photograph	CQ	922
92	Photograph	CR	922
93	Photograph	CS	922
94	Photograph	DC	938
95	Photograph	DF	938
96	Photograph	DG	938
97	Photograph	DH	938
98	Photograph	DI	938
99	Photograph	DJ	938
100	Photograph	DK	938
101	Photograph	DL	938
102	Photograph	DM	938
103	Photograph	DN	938
104	Photograph	DO	938
105	Photograph	DP	938
106	Photograph	DR	938
107	Photograph	DS	938
108	Photograph	DT	938
109	Photograph	DU	938
110	Photograph	DV	938
111	Photograph	DW	938
112	Photograph	DY	938

I N D E X

I N D E X

PLAINTIFF'S EXHIBITS:

NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
113	Photograph	DZ	938
114	Photograph	EA	938
115	Photograph	EB	938
116	Photograph	EC	938
117	Room Key	FE	948
118	Room Key Sleeve	GC	952
119	Cartridge	EE	958
120	Cartridge	EG	958
121	Magazine	EH	958
122	Cartridges	EI	958
123	Cartridge	EJ	958
124	Firearm	ED	964
125	Ammunition Box w/ Cartridges	EN	966
126	Fingerprint Cards	GD	970
127	Fingerprint Cards	GE	970
128	Cell Phone	BI	1023
129	Magazine	EF	1029
130	Fired Bullet	CT	1033
131	Fired Bullet	FA	1035
132	Fired Bullet	FC	1037
133	Fired Bullet	FH	1038
134	Fired Bullet Jacket	EL	1039
135	Jacket Fragment	FB	1043
136	Jacket Fragment	CU	1045
137	Piece of Lead	EM	1048
138	Fired Cartridge Case	EK	1050
139	Fired Cartridge Case	CV	1050
140	Fired Cartridge Case	CW	1050
141	Fired Cartridge Case	CX	1050
142	Fired Cartridge Case	CY	1050
143	Fired Cartridge Case	CZ	1050
144	Fired Cartridge Case	DA	1050
145	Fired Cartridge Case	DB	1050
146	Fingerprint Exemplars	GF	1063
147	Fingerprint Images	GI	1065
148	Fingerprint Images	GH	1065

I N D E X

I N D E X

PLAINTIFF'S EXHIBITS:

NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
149	Chart	GG	1067
150	Photograph	FJ	1110
151	Swab	FK	1110
152	Swab	FL	1110
153	Fingernail Clippings	FM	1110
154	Fingernail Clippings	FN	1110
155	Photograph	FO	1110
156	Photograph	FP	1110
157	Photograph	FQ	1110
158	Photograph	FR	1110
159	Photograph	FS	1110
160	Photograph	FT	1110
161	Photograph	FU	1110
162	Photograph	FV	1110
163	Photograph	FW	1110
164	Photograph	FX	1110
165	DVD	GJ	1149
166	Buccal Swab	CA	1353
167	Buccal Swab	CB	1353
168	DNA Card	FD	1353
169	Swab	EU	1354
170	Swab	EW	1354
171	Swab	ET	1357
172	Swab	EV	1357
173	Swab	EX	1357
174	Swab	EY	1357
175	Swab	EZ	1357
176	Swab	EO	1358
177	Swab	EP	1358
178	Swab	ES	1361
179	Swab	ER	1365
180	Swab	EQ	1366
181	Certified Conviction	GK	1851
182	Certified Conviction	GL	1851
183	Certified Conviction	GM	1851
184	Certified Judgment	GN	2305

I N D E X

I N D E X

PLAINTIFF'S EXHIBITS:

NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
185	Certified Judgment	GP	2305
186	Certified Judgment	GO	2305
187	Photograph	GQ	2323

DEFENDANT'S EXHIBITS:

NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
1	Vials of Blood	A	1444
2	Litigation Package	B	1477
3	DVD	I	2360
4	Power-point Presentation	J	2373
5	Photograph	F	2691
6	Photograph	G	2691
7	Photograph	H	2691

* * * * *

1 A I mean, at the beginning it was just one, he'd
2 make us go out there and cut one, and after that it came
3 where you'd two and rubber band them together so it would
4 be like almost like a thick little bamboo thing.

5 Q And how big a thing are you talking about?
6 Just show.

7 A Probably like, like that. It was long.

8 Q And so about that long?

9 A Yeah, and the ends had little sharp things on
10 them.

11 Q Would it ever leave marks?

12 A Yes, welts, bruises, all that.

13 Q Did you -- how did you go to school with welts
14 and bruises like that?

15 A Long pants, long shirts to hide the marks.

16 Q How was your -- how was your mother being
17 treated by your stepdad?

18 A In the beginning I guess he treated her good
19 but, you know, when she would leave he would -- that's
20 when he would start doing stuff with us, beating us and
21 all that, but you know through that she knew what time it
22 was too and she didn't do nothing about it.

23 Q By way of protecting you, is that what you're
24 saying?

25 A Yeah.

1 Q Did you feel like your mom didn't protect you
2 and your brothers?

3 A Yeah. And I -- you know, I can speak for me
4 and I could tell by my brothers, them too, you know, it
5 leave you kind of like bitter, you know what I mean,
6 because she went with it a lot of times. I'm thirty years
7 old and I'm still dealing with that. Still dealing with
8 that.

9 Q House it affected --

10 A I don't want to talk about this stuff, man.

11 Q You love your mother?

12 A I love her but she didn't do what she was
13 supposed to do.

14 Q She didn't protect Brandon either?

15 A No, she ain't protect none of us.

16 MR. MOORE: Can I approach the witness?

17 THE COURT: Yes, you may.

18 BY MR. MOORE:

19 Q Showing you some pictures. Okay.

20 A Yeah.

21 Q I want to show the witness what's been marked
22 as Defense F as in Frank, G as in Golf and H as in Hotel
23 and ask you to identify these. What's that a picture of?

24 A That's Brandon.

25 Q Brandon at what age?

1 A Probably two. Probably about two or something
2 like that. That is Brandon and me playing football.

3 Q What age do you think he was there?

4 A That's young, probably about seven, eight if I
5 had to guess. If I had to guess.

6 Q So, at that point your stepfather was living in
7 the house and the beatings were going on?

8 A Yeah.

9 Q All of you including Brandon were getting
10 those?

11 A Yeah.

12 Q And this picture, what is that?

13 A That's Brandon too.

14 Q What age do you think?

15 A Probably ten if I had to say. If I had to say.
16 I mean, I remember these pictures, you know, but I can't
17 give you a specific.

18 Q Is that the way he looked at that age in his
19 life?

20 A Yeah, always happy, always smiling.

21 Q Was there a time when that changed?

22 A Yes.

23 Q When was that?

24 A When he got older, you know, probably like
25 twelve, thirteen. He had been through so much, you know

1 what I mean, you ain't going nothing to smile about no
2 more. You feeling me?

3 MR. MOORE: Your Honor, at this time wed move
4 F, G and H into evidence.

5 THE COURT: Response from the State.

6 MR. MCMASTER: No objection.

7 THE COURT: Okay. F will be received as
8 Defense Exhibit Number 5, G will be received as
9 Defense Exhibit Number 6, H will be received as
10 Defense Exhibit Number 7.

11 MR. MOORE: And request to publish them.

12 THE COURT: Can she mark them first and then
13 you may publish.

14 (Thereupon, Defense Exhibit Numbers 5, 6 and 7
15 were marked and received in evidence and published to the
16 jury.)

17 BY MR. MOORE:

18 Q In terms of the punishment and who got punished
19 more or less than others, do you have a recollection of
20 whether you all got it about the same or some of you got
21 more than others?

22 A I mean, probably more than others, Brandon got
23 a lot of it because I left early. I left out of the house
24 early.

25 Q I can't understand you.

1 A I left out of the house early and like my
2 brother say he left too when he got a chance, between that
3 before -- between that that was Brandon way of life. I
4 mean, so -- but Brandon had got the months of it because
5 he had stayed there for a long period of time.

6 Q You're pretty close to Brandon?

7 A Yes, sir.

8 Q You say you're closer to him than other members
9 of your family?

10 A Yes, sir.

11 Q What Brandon like?

12 A He's a good person all across the board. If he
13 can help you, he'll help. Always there for you if you
14 need to talk to him. A lot of the times no -- even when
15 we got older we talked about it all the time, we all say
16 to each other like it wasn't right, you feeling me, you
17 know what I mean. Just stuff we had to go through that
18 weren't right.

19 Q After you moved out, how much communication did
20 you have with Brandon, how much contact?

21 A Not -- not all the time anymore because I was,
22 you know, I was different places, Brandon was still going
23 to school and stuff.

24 Q You were about fifteen?

25 A Yes.

1 Q Brandon would have been about nine at that
2 time, about the age that he was in the pictures in the
3 football?

4 A Yes, sir.

5 Q Is that right?

6 A Yes, sir.

7 Q What impact -- what contact do you have with
8 your brother now?

9 A Now?

10 Q Yeah.

11 A On the phone.

12 Q How often do you talk to him?

13 A I mean, it varies, whenever he's on the phone
14 but you still talk a lot, you still communicate a lot.

15 Q What impact would your brother's execution have
16 on you?

17 MR. MCMASTER: Objection, Your Honor.

18 THE COURT: Okay. I'll sustain.

19 MR. MOORE: Approach? May we approach?

20 THE COURT: You may.

21 (Thereupon, a benchside conference was had out
22 of the hearing of the jury as follows:)

23 MR. MOORE: Your Honor, the case that I'd like
24 to cite, it's a Florida Supreme Court case from 2003,
25 Lugo versus State, 845 So.2d 74, it's about a seventy

1 page case so I didn't copy the whole thing, but the
2 part -- the portion that deals exactly with this and
3 reading from the case it says the defendant asserts
4 that the trial judge improperly weighed the following
5 proffered mitigating circumstance, one, that his
6 execution will have a tremendous negative impact upon
7 the lives of his elderly mother and siblings. With
8 regard to the second circumstance which is the impact
9 of the execution on the lives of his siblings and
10 family, the trial judge did not abuse its discretion
11 in deciding little weight while the impact that
12 Lugo's execution would have on his mother and
13 children is properly cognizable, it nevertheless does
14 not outweigh the aggravating -- aggravators attached
15 to the murder. So, it's a weighing issue, but by the
16 way the court notes that that particular type of
17 testimony is properly cognizable and it is proper for
18 it to come. In other words, it's within the court's
19 discretion and the court approved of it being
20 considered by the jury in that case.

21 MR. BROWN: Judge, I believe I've read that
22 case, it doesn't deal with the issue of whether or
23 not it should have been admitted and that's the issue
24 with the cases. The only case that (unintelligible)
25 Mr. Moore has used this case in the past to try to

1 get this in. It doesn't stand for the proposition
2 that is this proper mitigation and the court gave it
3 a little weight and the Supreme Court simply said
4 there's no error there.

5 MR. MOORE: What is properly -- I'm sorry.

6 MR. BROWN: This is not mitigation. It has
7 nothing to do with the defendant, his background, his
8 life history, details of the crime, it has nothing to
9 do wit it. The question posed is what's the effect
10 on some third person and that is no way, shape or
11 form remotely close to mitigation, period.

12 MR. MOORE: If that were the case, the court
13 wouldn't have said it's properly cognizable, they
14 said it shouldn't have been introduced or considered
15 at all and that's not what they said. Properly
16 cognizable means it's something that a court can
17 consider, evidence can be introduced and the court
18 decide what weight to give it and because they
19 decided to give little weight that was appropriate,
20 but they didn't say there that it's something that
21 should never been introduced or considered, they said
22 it's cognizable, that means the court can take notice
23 of it, it can be introduced.

24 MR. BROWN: It's the same thing of asking a
25 witness what his opinion is on whether or not he

1 should be executed and that clearly is not allowed.

2 MR. MOORE: No, I wouldn't ask that. I can't
3 ask that but I can ask about the impact under this
4 case.

5 THE COURT: Okay. I'm going to sustain the
6 objection. Okay, thank you, sir.

7 (Thereupon, the benchside conference was
8 concluded and the proceedings were had as follows:)

9 BY MR. MOORE:

10 Q Mr. Nelson, I know this is difficult for you
11 but, in testifying you feel like your mother didn't stand
12 up for you, how -- what kind of a situation does that
13 place you in in terms of coming in here and testifying on
14 behalf of your brother?

15 A Puts me in a crazy predicament because I love
16 my mom, I love my mom, but it's just the truth, she didn't
17 do what she was supposed to do.

18 Q For any of you kids?

19 A For any -- not me and my brothers. I mean,
20 thirty years old and I can't get over that junk, man.

21 Q Have you ever talked to Brandon about the
22 impact on him?

23 A I mean, we knew what the impact was, we wasn't
24 bad children. My life messed up, man, because of that. I
25 mean, my.

1 MR. MOORE: No further questions?

2 THE COURT: Okay. Cross examination by the
3 State.

4 MR. MCMASTER: No questions.

5 THE COURT: Okay. Sir, thank you for your
6 testimony, you're free to step down.

7 THE WITNESS: Can I say something?

8 THE COURT: You need to -- there needs to be a
9 question before you can say something.

10 THE WITNESS: All right.

11 THE COURT: Okay. Thank you, sir.

12 MR. MOORE: Your Honor, I do have some more
13 questions.

14 THE COURT: Okay. Do you have more questions?

15 MR. MOORE: Briefly.

16 THE COURT: Okay. I'll allow more questions.

17 BY MR. MOORE:

18 Q Mr. Nelson, were you aware of a point in time
19 when Brandon's girlfriend had a miscarriage?

20 A I heard, I heard things and, you know, my mom
21 called me about it and told me about it and I couldn't get
22 ahold of him for a second about it.

23 Q Do you know what impact that had on Brandon?

24 A He went -- it wasn't the Brandon I knew.

25 Q What do you mean?

1 A It just wasn't the Brandon I knew. When I use
2 to call him any time he'll pick up the phone and when I
3 called him around that time he wasn't picking up.

4 Q Was there a change that you saw in Brandon?

5 A Yeah.

6 Q And when did that change take place?

7 A Probably about around that time.

8 Q About the time his girlfriend had a
9 miscarriage?

10 A Yes.

11 Q Do you know Travontey Williams?

12 A Yes.

13 Q Do you know that he was killed?

14 A Yes.

15 Q A close friend of Brandon's?

16 A Yeah, real close, use to come to our house all
17 the time.

18 Q What impact did that have on Brandon, his
19 death?

20 A I remember the night it happened, I held him
21 for about an hour straight and the middle of the street,
22 he was crying just like a little baby. He had nightmares,
23 he couldn't understand it. I had never seen him break
24 down like that.

25 Q Did you see a change in Brandon at about that

1 point in his life?

2 A Yeah, little bit change, the drugs, the drugs
3 was heavy again, wasn't the Brandon I knew at all.

4 Q Did he seem to be less trusting of people?

5 A He was still trusting but not to everybody, he
6 couldn't deal with a lot of people after that.

7 Q Do you know of other friends he lost and how
8 that affected him, or cousins?

9 A Yeah.

10 Q Who were some of the other losses?

11 A My cousin, my cousin Marcus, he passed away, he
12 was killed.

13 Q You said he was killed?

14 A Yeah.

15 Q Shot?

16 A Yeah, he was murdered.

17 Q How did that affect Brandon?

18 A That affected the whole family, if affected
19 everybody and it affected him, he took it hard too.

20 MR. MOORE: Thank you, Mr. Nelson. No further
21 questions.

22 THE COURT: Okay. Cross examination by the
23 State.

24 MR. MCMASTER: Still no questions.

25 THE COURT: Okay. Sir, thank you, you can step

1 down.

2 (Thereupon, the witness exited the witness
3 stand.)

4 THE COURT: Okay. Other witnesses on behalf of
5 the Defense?

6 MR. MOORE: Can we approach?

7 THE COURT: Yes, you may.

8 (Thereupon, a benchside conference was had out
9 of the hearing of the jury as follows:)

10 MR. MOORE: We want to proffer Mr. McAndrew's
11 testimony and we were -- other than that we're done
12 with witnesses and we will rest.

13 THE COURT: Okay. And you don't have your
14 witnesses until Tuesday?

15 MR. BROWN: Correct.

16 THE COURT: So, what I intend to do is let the
17 jury go for the day, have them come back Tuesday
18 morning. What time Tuesday morning. 8:30, 9:00?

19 MR. BROWN: Yeah. She's coming from Tampa so
20 she'll be here at 8:30, 9:00.

21 THE COURT: Okay.

22 MR. BROWN: But it's up to the court obviously.

23 THE COURT: We'll do 9:00, everyone seems to
24 like that better.

25 MR. MOORE: Looking at me? I like it better,

1 yeah.

2 THE COURT: We'll do 9:00. Does -- and then do
3 we want to do the proffer, is that going to take a
4 little bit of time?

5 MR. MOORE: Probably ten minutes at most.

6 THE COURT: Then we can do it and they can we
7 can break.

8 And then I need to question Mr. Brandon with
9 regard to not testifying. So, we won't have you rest
10 until Tuesday because I need to question him first.

11 MR. MOORE: Okay.

12 THE COURT: I mean, I could have you rest and
13 then question him.

14 MR. BROWN: Yeah, you could do that and then if
15 he suddenly wants to testify they can reopen, we
16 won't object to that.

17 MR. LANNING: It may be less speculating --

18 MR. MOORE: You know, we may have stuff that
19 comes up that I can't anticipate and if we do I don't
20 want to be in a position of -- why don't we just wait
21 until Tuesday and we'll rest.

22 THE COURT: Okay. Do you want me to question
23 him Tuesday or you want me to question him today?

24 MR. MOORE: Tuesday. Tuesday, yeah, Tuesday.

25 THE COURT: Okay. All right. Then you can

1 step back.

2 (Thereupon, the benchside conference was
3 concluded and the proceedings were had as follows:)

4 THE COURT: Okay. Ladies and gentlemen of the
5 jury, we have some matters that we need to address
6 and we're going to go ahead and let you recess for
7 the day. That's why I kept you a little later
8 because I didn't want you to have to come to lunch
9 and then be here a short period of time and then
10 recess. So, I'm going to allow you to recess for
11 today. I need you to be back here Tuesday morning at
12 9:00 a.m. During this recess you must continue to
13 abide by the rules governing your service as a juror.
14 Specifically, do not discuss this case among
15 yourselves or with anyone else or allow anyone to
16 discuss it in your presence. Do not speak to the
17 lawyers, the parties or the witnesses about anything.
18 You must avoid reading newspaper headlines and/or
19 articles relating to this trial or its participants.
20 Avoid seeing or hearing, television, radio or
21 Internet comments about the trial should there be
22 any. Do not conduct any research yourself regarding
23 any matters concerning this case. Okay. For the
24 jury court will be in recess until 9:00 a.m. on
25 Tuesday morning. Okay. Thank you. Tuesday is April

1 8th.

2 (Thereupon, the jury was escorted out of the
3 courtroom by the court deputy and the proceedings were had
4 as follows:)

5 THE COURT: Okay. Please be seated.

6 Mr. Moore, you wanted to proffer the testimony of Ron
7 McAndrew?

8 MR. MOORE: Yes.

9 THE COURT: Okay. We can do that at this time.
10 So, if you'll bring him in.

11 Sir, if you'll step up before the clerk to be
12 sworn.

13 THEREUPON,

14 RONALD MCANDREW,
15 having been first duly sworn, was examined and testified
16 upon his oath as follows:

17 THE COURT: Sir, if you'll have a seat in the
18 witness chair. Once seated if you'll scoot your
19 chair forward. Do adjust that microphone. Do talk
20 into that microphone, it helps us hear your
21 testimony, it also aids in recording your testimony.
22 Okay, Mr. Moore.

23 DIRECT EXAMINATION

24 BY MR. MOORE:

25 Q Mr. McAndrew, would you identify yourself,

1 please?

2 A Ronald D. McAndrew, M-C-A-N-D-R-E-W, doing
3 business as Ron McAndrew.

4 Q And what is your business?

5 A I'm a prison and jail consultant expert
6 witness.

7 Q How many times have you testified as an expert
8 witness in prison and jail issues?

9 A More than fifty.

10 Q And how many of those have been testimony as an
11 expert witness in death penalty cases on the issues of
12 prison conditions?

13 A Between six and twelve.

14 Q And when was the most recent time you testified
15 as an expert in your field in a death penalty case?

16 A Approximately three weeks ago.

17 Q Where was that?

18 A Broward County, Florida.

19 Q And just in a sentence, what was the coverage,
20 what was the subject of your testimony?

21 A The subject of my testimony was this was the
22 Alvin Stevenson case, State of Florida versus Alvin
23 Stevenson, my testimony surrounded his conduct while
24 incarcerated at the Broward County Jail.

25 Q What is your education?

1 A I have an Associate in Arts degree in criminal
2 justice administration from Miami/Dade College. I'm a
3 certified public manager through the Center for Public
4 Management at Florida State University, that is not a
5 Bachelor's degree, it's a state certification. I have
6 more than a dozen career development courses all forty
7 hours or more each through the Florida Department of
8 Corrections taught at various community colleges around
9 the state and countless training seminars and other
10 training events conducted by the Florida Department of
11 Corrections or other correctional agencies throughout the
12 country.

13 Q And you have worked in the Department of
14 Corrections?

15 A I have.

16 Q For how many years?

17 A Twenty -- more than twenty-two years in the
18 Florida Department of Corrections and a little less than a
19 year with the Orange County Jail also under the Florida
20 State Retirement System.

21 Q What did you do at the Orange County Jail?

22 A I was the interim director.

23 Q And what positions have you held in the Florida
24 Department of Corrections?

25 A I started out in 1979 as a basic correctional

1 officer, I worked my way through all the gut level
2 positions of correctional officer, sergeant, lieutenant,
3 captain, investigator, inspector, major. I skipped over
4 deputy warden -- skipped over colonel and became a deputy
5 warden in 1988. I was appointed as a warden to open a new
6 prison in Gulf County, Florida in 1992. In 1996 I was
7 appointed as the warden of Florida State Prison. In 1998
8 I was appointed as the warden of Central Florida Reception
9 Center and that was -- I was there for another four and
10 half years. 2001 I retired from the state for five days
11 and was then asked to take over the Orange County Jail
12 until a national search could be done to appoint a
13 permanent director.

14 Q Could you name a few of the professional
15 affiliations that you have?

16 A I'm a member of the American Correctional
17 Association. I'm a member of the Hispanics in Corrections
18 Association. I'm a member of the Northern American
19 Wardens Association. I'm a member of several other
20 correctional affiliated organizations but I can't remember
21 those without referring to my resume.

22 Q And have you given presentations to
23 professional groups, lawyers, any other professional
24 groups, Department of Corrections corrections officers in
25 your field of prison and jail issues?

1 A Many times.

2 Q If you had to put a number on that?

3 A More than a hundred.

4 Q Okay. And your tour duty as a warden of
5 Florida State Prison, that's where one of the death rows
6 is, correct?

7 A That's the home of death row and the death
8 chamber. Union Correctional Institution houses a larger
9 number of death row inmates pending execution.

10 Q Part of your responsibilities would be
11 classifying inmates according to their background, ages,
12 sizes, disabilities, mental health issues in terms of
13 where to put them?

14 A Yes, sir.

15 Q And you seek to put together a profile?

16 A Yes.

17 Q And that is --

18 A Of a sort.

19 Q All right. What -- how would you describe it?

20 A Profile -- inmates are classified.

21 Q Classified. Okay. You seek a classification?

22 A Yes, sir.

23 Q And that's to -- that's for -- the goal is to
24 make sure that the person gets through his or her sentence
25 and doesn't get misplaced and -- which would be a jeopardy

1 to possibly your staff or to the inmate?

2 A Yes, sir, and -- but most importantly to see
3 that their needs are more appropriately met by the Florida
4 Department of Corrections while security needs are met at
5 the same time.

6 Q Okay. So, part of that is predicting how a
7 person in a specific classification is going to acclimate
8 into a prison setting, would that be correct?

9 A Correct.

10 Q And if you received an inmate who was a black
11 male about twenty-four years of age with brain damage,
12 with mental health issues who has been convicted of first
13 degree murder of a law enforcement officer, what would be
14 done with such an inmate?

15 A It would depend upon the actual sentence.

16 Q If the sentence is life without parole, what
17 would be done with that inmate?

18 A That inmate would be assigned to a close
19 custody facility that could also meet his physical and
20 mental health needs.

21 Q Would such an inmate of that age go to a
22 youthful offender facility?

23 A No, sir.

24 Q And would the -- could you predict the likely
25 institution where that inmate would wind up?

1 A Santa Rosa Correctional Institution would be
2 one place, Columbia Correctional Institution could be
3 another.

4 Q Now, if the inmate were sentenced to life
5 without parole, that inmate would be in open population,
6 would that be right?

7 A Yes, sir.

8 Q And what would be the -- in your experience and
9 training, what would be the risks of harm to that
10 individual as well as to your staff of such a placement of
11 such a person in the open population let's say in Santa
12 Rosa?

13 A I'm sorry, but I really don't follow the
14 question.

15 Q Right. What would be your concerns in placing
16 an inmate with that classification, that profile, my term,
17 in the open population at Santa Rosa?

18 A Without knowing the nature of the charge or?

19 Q No, we're talking about a twenty-four year old
20 black male convicted of guilty of first degree murder of a
21 law enforcement officer with mental health issues, with
22 drug history, that's what I'm talking about, that type of
23 individual and what concerns -- what would you be looking
24 out for in your classification decision of putting that
25 person in open population?

1 A Well, first of all, I wouldn't have any choice
2 about whether he went to a close custody facility or not,
3 the sentence of life without the possibility of parole
4 would demand that he be assigned to a close custody
5 correctional institution in Florida. The concerns of a
6 warden receiving such an inmate at an institution like
7 that would be would be quite serious.

8 Q What would the concerns be?

9 A Well, the concern would be first of all that
10 the expression of a cop killer, someone who's has killed a
11 law enforcement officer, is not going to fare well on the
12 compound of an institution.

13 Q And from -- in what regard?

14 A It's common knowledge that, pretty much across
15 the board, correctional officers throughout the state or
16 throughout this country despise cop killers. I've dealt
17 with this throughout my career from the lowest rank to the
18 highest rank that I held with the Florida Department of
19 Corrections, I've seen it firsthand many times and I know
20 without question that inmates who have killed law
21 enforcement officers do not fare well with staff.

22 Q And what is the purpose of the staff that
23 you're talking about? What is their function? What are
24 there responsibilities in governing an inmate population?

25 A Their first responsibility is to protect the

1 public. Their second set of responsibilities is to
2 protect staff, inmates and the institution as a whole.

3 Q Dealing with the second set of
4 responsibilities, know that Mr. Bradley is a killer of a
5 police officer, what impact would that have on
6 correctional staff and their ability to -- and your
7 confidence in their ability to protect somebody like
8 Mr. Bradley?

9 A As the warden I would be afraid that staff
10 would turn a blind eye to most everything that could
11 happen to an offender who has killed a law enforcement
12 officer.

13 Q A twenty-four year old black male with mental
14 health issues, mental illness, a drug history who has
15 killed a law enforcement in an inmate population, what
16 sort of dangers would you expect your staff to be on the
17 look out for to protect him from?

18 A I would first like at his stature, his mental
19 health in terms of how he can maintain his status quo?

20 Q Let me stop you there. Mr. Bradley, will you
21 stand up, please? Mr. Pirolo, stand up too.

22 So, you see Mr. Bradley's stature. So, how
23 would that fit into your, you know, your concern levels
24 and how to address them?

25 A The more experienced offenders who have done a

1 lot of time in many cases or most cases, the offenders who
2 are larger, those that are brutal would seek out the
3 smaller less defensible offenders such as this gentleman.

4 Q Meaning Mr. Bradley?

5 A Yes, they would.

6 Q So, you -- if you want to put it in kind of
7 blunt terms, if there's a food chain he would not be at
8 the top, he would be at the other end?

9 A He would be at the bottom.

10 Q And so what -- how would that play out in real
11 life for someone like Mr. Bradley in prison in open
12 population?

13 A In open population he would have difficulty
14 maintaining any kind of personal property, it would be
15 taken away from him. He would have difficulties
16 protecting himself from sexual predators. He would have a
17 difficult time having anyone who would support him or
18 defend him on the compound be it other offenders or
19 uniformed staff.

20 Q By contrast, what would -- how would those
21 issues play out if Mr. Bradley were on death row,
22 sentenced to death?

23 A On death row Mr. Bradley would live in a cell
24 that's six feet wide, nine feet long and about nine and a
25 half or ten feet tall with concrete and steel on three

1 sides and bar stock on the fourth side with a door and a
2 flap, the only natural light he would have would come from
3 across the hallway approximately thirty, thirty-five feet
4 away through a narrow window that gives the minimum amount
5 of daylight, but in that cell he would have twenty-four
6 hours a day of protection, it would be his own private
7 room per se. He would -- he would be allowed to purchase
8 his own thirteen inch television set from the canteen.
9 While he would not have cable television he would have
10 access to a number of channels through an antenna that's
11 on top of the prison. He would -- he would have a cot, he
12 would have his own private toilet, his own private sink
13 and he would be taken out of his cell an hour a day for
14 natural sunlight and exercise.

15 Q So, among the differences between open
16 population and the death row would be on death row there
17 would be security, there would be ability to maintain at
18 least the integrity of his body and his property whereas
19 maybe in open population that would not be the case?

20 A Exactly.

21 Q And now we've contrasted open population with
22 death row, can you do a similar contrast between open
23 population and the real world on the other side of the
24 wall, how would you contrast those?

25 A It's -- most folks really don't have much of an

1 idea of how the social structure of a prison works
2 compared to the one that you and I enjoy. A small example
3 would be that I walk out of my house early in the morning
4 to pick up my newspaper and I see a cigarette butt on my
5 front yard, to me that's disgusting, I don't want it
6 there, it's litter, I'm not even going to pick it up with
7 my bare hands, I'm going to find something to pick up --
8 dispose of it, get it a way. That same cigarette butt on
9 a prison compound represents pleasure, represents power,
10 represents money, represents trading material, it
11 represents the ability to do something with what you and I
12 would consider as nothing.

13 Looking another person directly in the eye as
14 I'm looking at you right now could get yourself seriously
15 hurt or possibly even killed in a prison. You don't look
16 at another person directly in the eyes without their
17 permission.

18 It's a place where you work -- walk a very fine
19 line in order to maintain your own personal safety and
20 security. You can't be a friend of a uniformed staff or
21 you'll be seen as a snitch. At the same time you have to
22 be very careful who you're friendly with among the
23 offender population because they may want something from
24 you that you're not willing to give up. It's an entirely
25 different social structure. Things that mean an awful lot

1 to offenders mean nothing to us in many cases and the
2 value of life there as opposed to value of the life out
3 here has two different meanings.

4 Q Can you categorize like a demographic of the
5 inmates who would likely be in such a prison in open
6 population?

7 A The demographics --

8 Q Well --

9 A I really don't follow.

10 Q Well healed, people who are -- tend to be on
11 the violent side, do they tend to be the worst offenders,
12 those sorts of criteria, that's what I'm talking about.

13 A In a closed custody facility, of course, you're
14 going to have a mixture, you're going to have the worst of
15 the worst. You're going to have a lot of people that are
16 doing life without the possibility of parole. You're
17 going to have people that are doing life on what I call
18 the installment plan, in and out of prison every five or
19 ten years. You're going to have sex offenders. You're
20 going to have every walk and talk you can possibly
21 imagine, and mixed in with this you're going to have some
22 good and decent people who made a mistake and they're
23 paying for it.

24 Q And are these people who let's say when lights
25 go out, are they -- do they have individual cells or what

1 would be the bunking arrangement?

2 A There's two types, generally two types of
3 housing for close custody offenders around the State of
4 Florida. You can either be in a two man cell where you
5 would be locked in your cell from a certain hour late in
6 the evening until an early hour in the morning and then
7 your cell would be unlocked during the day. A large
8 percentage of the population, to include close custody
9 inmates, is what's called open bay dormitories and these
10 are dorms where approximately sixty, sixty-five, even
11 seventy inmates sleep in bunks that are actually double
12 bunked in certain areas along the walls of these
13 dormitories. So, you can be in either a cell with one
14 other person or a number of other persons or in an open
15 bay dormitory.

16 Q In an open bay, what type of security is in
17 place to protect inmates from each other?

18 A You have an officer who is in the -- in a
19 control room which is situated between two of these open
20 bays, normally, and he will -- he's there -- he or she is
21 there throughout the day twenty-four hours a day and if
22 they see a fight going on or an assault of some kind in an
23 open bay dormitory or for that matter in a two man cell,
24 they call in an emergency call to get additional staff
25 there to break it up.

1 Q How quick is the response?

2 A It all depends on the institution, it depends
3 on the staffing of the institution, it depends on the
4 staffing of that particular shift, it could be anywhere
5 from minutes to quite some time.

6 Q Could depend on their attitude toward the
7 inmate?

8 A Yes, I'm afraid to say so.

9 MR. MOORE: That's my proffer, Your Honor.

10 THE COURT: Okay. Does the State wish to
11 inquire?

12 MR. MCMASTER: No, Your Honor.

13 THE COURT: Okay. Sir, thank you for your
14 testimony, you're free to step down.

15 (Thereupon, the witness exited the witness
16 stand.)

17 THE COURT: Okay. Is there anything we need to
18 address today? Hearing nothing, the court will be in
19 recess until 9:00 a.m. on Tuesday morning. The
20 court's in recess until Tuesday morning. Thank you.

21 (Thereupon, court was in recess for the day,
22 4/4/2014. Thereafter, court was reconvened on 4/8/2014
23 and the proceedings were had as follows:)

24 THE COURT: Okay. Any preliminary matters that
25 we need to discuss on behalf of the State?

1 MR. BROWN: Judge, only when we get to that
2 point, we do have jury instructions.

3 THE COURT: Okay.

4 MR. BROWN: Completed. I've got the Defense
5 proposed set, the circumstances in there we'll have
6 to have some discussion on that and there isn't
7 anything else as far as the rest was jury
8 instructions as to the submission. Okay.

9 THE COURT: Okay. I do intend to address that.
10 I wasn't going to do it this morning but I do intend
11 to address that.

12 Anything else on behalf of the State?

13 MR. BROWN: No.

14 THE COURT: Any other matters on behalf of the
15 Defense?

16 MR. MOORE: No.

17 THE COURT: I do need to address with
18 Mr. Bradley whether he intends to testify in this
19 phase of the trial. Is this an appropriate time to
20 do that?

21 MR. MOORE: He's not going to be testifying, we
22 have discussed it fully, his decision is to not take
23 the witness stand.

24 THE COURT: Okay. Can we make sure that the
25 microphone is on at the Defense table? If you all

1 could touch that microphone for me just to make sure
2 if it's on. No. Can we turn on the microphone at
3 the Defense table? Digital recording, if you can
4 hear me, if we could turn on the microphone at the
5 Defense table. They haven't done that. I know
6 they're here. I mean, he might just have to stand up
7 and come up to the podium, I was just trying to save
8 him in the trouble of doing that. If you could touch
9 the microphone again. Yeah, he'll need to come up --
10 Mr. Bradley, I'm going to have you come up and step
11 up to the podium if you could, please.

12 Okay. Mr. Bradley, your attorney has
13 represented that in the penalty phase of the trial
14 that you are not going to testify, do you -- do
15 you -- did you hear your attorney make that response?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Okay. And you do have the right
18 not to testify if you choose to do so in this phase
19 of the trial. You also have the right to testify in
20 this phase of the trial if you choose to do so. Have
21 you had enough time to discuss this issue with your
22 attorney?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you need any additional time to
25 discuss this issue with your attorney?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: And is -- your attorney has
3 represented that it's your intention not to testify
4 in this phase of the trial. Is it your intention not
5 to testify in this phase of the trial?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Have you -- are you taking any
8 medication at this time?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Have you taken any medication
11 today?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Did you take your medication
14 yesterday?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: And how does the medication affect
17 your ability to think? Can you think more clearly
18 with the medication or less clearly with the
19 medication? Or does it not affect your thinking at
20 all?

21 THE DEFENDANT: I'm thinking.

22 THE COURT: Okay. Are you thinking clearly
23 today?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Okay. And do you understand what

1 is happening here today?

2 MR. MCMASTER: Yes, ma'am.

3 THE COURT: And has anyone, including your
4 attorneys, pressured you into not testifying?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: And is that decision your own
7 decision?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. Okay. Thank you, sir, you
10 can be seated.

11 Okay. I don't think the Defense has rested on
12 the record. So, when we come back we'll need to do
13 that first. And then is the State ready with
14 rebuttal testimony?

15 MR. MCMASTER: Judge, after considering it over
16 the weekend and taking the deposition of the doctor
17 yesterday, the State has decided we're not going to
18 be presenting any rebuttal testimony.

19 THE COURT: Okay. That kind of changes the
20 course of proceedings for the course of the morning.

21 MR. MCMASTER: Yes, ma'am.

22 THE COURT: Then what we'll do is we'll -- do
23 you need the jury instructions to do for purposes of
24 closing?

25 MR. MOORE: Yes, it would be helpful to deal

1 with the mitigating circumstances. I think as to the
2 body the State has processed, we don't have an
3 objection to the standard. So, yes, we need
4 (unintelligible).

5 THE COURT: Okay. I need the microphone at
6 their desk turned on. Okay. Can we touch it? It's
7 not activated.

8 THE COURT DEPUTY: They were working on them
9 yesterday.

10 THE COURT: They maybe have been turned off so
11 long they don't know how to turn them back on. I can
12 hear that. I can hear that.

13 THE COURT DEPUTY: That's not.

14 THE COURT: Yeah, I can't -- that's not doing
15 what it's supposed to do. All right. If you can
16 call digital recording and tell them -- I just want
17 to make sure that this is being recorded and that
18 they're picking everything up.

19 MR. BROWN: Judge, if I can approach with this.

20 THE COURT: Yes.

21 MR. MOORE: If I may approach?

22 THE COURT: Thank you, sir. Okay if you could
23 tell the jury that we have an issue that we need to
24 address and it's going to take a few moments. So, if
25 they desire to go get some coffee and will be

1 downstairs for a few minutes. I don't want them --
2 you know, I don't object to them getting coffee, I
3 don't object to them walking outside and smoking if
4 they wish to do that but I -- you know, I want -- I
5 don't want them to mill around in the general public.
6 Okay. Okay.

7 I have no doubt I'm being recorded, I mean,
8 with all due respect. I'm concerned about the two
9 parties being recorded. You know they just changed
10 it from jury trial to on the record. Can you
11 touch -- if you'll touch your microphone. All right.
12 Now we're good, we'll just do that. I think in jury
13 trial mode it gets turned off.

14 You know, I want to ask since we -- we're going
15 to -- the State's -- the Defense is going to rest on
16 the record and the State is not presenting any
17 rebuttal evidence, I do have another question for
18 Mr. Bradley at this phase. Mr. Bradley, are you
19 satisfied with your attorneys representation of you
20 during the penalty phase of this trial?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Okay. Is there anything else that
23 you would have requested that your attorneys would
24 have done differently?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: And is there any additional
2 evidence that you desire for them to present?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Okay. Okay. Thank you.

5 Okay. Now, with regard to the -- let's go
6 over -- let's go ahead and do the charge conference
7 and go over the jury instructions. Okay. I'm
8 looking at the first page of the instructions for
9 the -- presented by the State. Any objection to the
10 first phase? I mean first page?

11 MR. MOORE: No, no objection.

12 THE COURT: I haven't read through those so I'm
13 assuming that you all have read through these. I
14 mean, this whole -- I thought from what I heard you
15 had no objections to this whole packet, is that
16 correct? Or can we go through one, two, three, four,
17 the first five pages?

18 MR. MOORE: Let me just look up some of these
19 and I'll respond.

20 THE COURT: Okay.

21 (Thereupon, a pause was taken in the
22 proceedings.)

23 THE COURT: Digital recording, when I want the
24 attorneys to be on the record I'll just go to on the
25 record and then when we -- if we want to shut off the

1 mics I'll go to jury trial.

2 (Thereupon, a pause was taken in the
3 proceedings.)

4 MR. MOORE: Your Honor, my -- I have these
5 objections as to the proposed aggravating
6 circumstance of cold, calculated, premeditated. When
7 Dr. Olander testified she said that Mr. Bradley was
8 not capable of engaging in calm, cool reflection
9 which is the language in the definition portion of
10 that instruction. She said that he is not capable of
11 engaging in a careful plan, which is another
12 essential element as it were for that aggravating
13 circumstance. That being the only testimony as to
14 those elements that have been offered in the penalty
15 phase, there is insufficient evidence to go to the
16 jury and I would move for a directed verdict judgment
17 of acquittal on that basis as to the cold, calculated
18 premeditated jury instruction.

19 As this Court knows as the instruction
20 provides, premeditation is a heightened degree of
21 premeditation, not mere premeditation as defined in
22 the standard instruction, and requires the additional
23 aspects of it, the ability to engage in calm, cool
24 reflection which has been -- the only evidence on
25 that is Mr. Bradley could not engage in that. In

1 fact, did not have the capacity to do that in the
2 opinion of Dr. Olander. And also in a careful --
3 that there had to be a prearranged or careful plan
4 and Dr. Olander's opinion on that has not been
5 rebutted. So, there is insufficient evidence to go
6 to the jury, I move for a direct verdict judgment of
7 acquittal on that aggravating circumstances and I've
8 got some issues with a couple of others if the Court
9 wants to deal with that and we can move on after the
10 Court rules.

11 THE COURT: Okay. Response from the State.

12 MR. BROWN: Judge, it's a -- our position is
13 it's a question for the jury. It's a factual
14 question. That was Dr. Olander's testimony but the
15 jury has to decide whether to believe that or not in
16 light of other what we argue conflicts and issues
17 with her -- forming her opinion.

18 In this particular case we have what we know
19 from the time the camera is turned on, three minutes
20 fifty-two seconds we know that the vehicle police --
21 Deputy Pill was observed prior to that coming at them
22 and then she had to make the turn around and it's
23 only after she made the turn around got behind the
24 car, turned her lights on that we then -- that the
25 video started running preceding that point by thirty

1 seconds. So, we have at a minimum three minutes and
2 fifty-two seconds. Our argument is we have quite a
3 bit longer than that of the timeframe when the
4 discussion actually started between the defendant and
5 Andria Kerchner that he was going to have to kill
6 her. So, you have a -- our position a lengthy period
7 of time. It's certainly a murder that was
8 calculated, cold, premeditated. We think there's
9 enough there. There's certainly no pretense of any
10 moral or legal justification. Judge, I would cite
11 the Court to Valle v. State which is 581 So.2d 40,
12 Florida Supreme Court case. May I approach?

13 THE COURT: Yes, you may.

14 MR. BROWN: Judge, in the Valle case,
15 specifically it's on page 9 of the printed copy I
16 gave you in the section under headnote 20 they cover
17 the factual circumstances. In this particular case
18 they got approximately eight minutes elapsed between
19 the initial stop and the murder of Officer Pena. Our
20 case our position is a little different in that the
21 discussion starts prior to the stop, the defendant
22 announcing what his plan is, what his intent is.

23 This particular case the officer's shot at from
24 a distance of one and a half to three feet, ours is a
25 distance of less than two feet or less, approximately

1 two to five minutes elapsed from the timing, the time
2 when the defendant left Officer Pena's car to get the
3 gun and slowly walked back and shoot and kill Officer
4 Pena. Where we don't have that timeframe because
5 he's actually with the gun from the beginning. The
6 Supreme Court and they cite to the trial court and
7 the trial court found that these actions establish
8 not only a careful plan to kill Officer Pena to avoid
9 arrest but demonstrate the heightened premeditation
10 needed to prove this aggravating circumstance. This
11 was without any doubt an execution type murder, it
12 was committed without any pretense or moral legal
13 justification. Officer Pena did nothing to provoke
14 or cause the defendant's actions, this aggravator
15 factor has been prove beyond a doubt to the exclusion
16 of every reasonable doubt.

17 The Florida Supreme Court then goes on we
18 believe these facts are sufficient to sustain a
19 finding that the murder was cold, calculated and
20 premeditated. Ours is factually fairly similar to
21 this scenario and I think it's a jury question for
22 cold, calculated premeditated.

23 Judge, we've also previously given you Griffin
24 v. State which is 639 So.2d 966 and that's another
25 case where the court upheld the finding of CCP in the

1 murder of a police officer. That's on the last page,
2 page 9. I can give the court my copy that I have if
3 you don't have it with you. This particular case the
4 facts were summed up in the sentencing order that the
5 trial court upheld the defendant after committing an
6 armed burglary and robbery stated to both Mr. Trallo
7 and Mr. Velez that if they were pulled over by the
8 police he would get out and shoot because he was not
9 going back to jail. Twenty-six hours later the
10 defendant committed another armed burglary. While
11 driving away from that scene there was the stop and
12 then the killing of the police officers. He got out
13 of the car and started shooting. So, in that
14 particular case also the court upheld CCP for the
15 killing of a police officer. I think the combination
16 of both these cases and certainly the Valle case
17 because I think factually that's very similar to what
18 we have here. It certainly stands for the
19 proposition that this should be a jury question, let
20 the jury decide and then the Court -- if the jury
21 recommends death the Court makes the final decision
22 in it's sentencing order.

23 MR. MOORE: As Mr. Brown pointed out, that case
24 is similar but it's distinguishable on the lack of
25 evidence supported or any evidence to go to the jury

1 on calm, cool reflection. Let me read the
2 instruction here. It says cold means the murder was
3 done in calm, cool reflection, and I'm looking at
4 Valle, that there's no testimony on -- one way or the
5 other on the capacity to engage in such a thought
6 process. There were experts who testified about
7 extreme mental or emotional disturbance but nobody
8 weighed in on this particular element of cold,
9 calculated, premeditated. And so that being -- you
10 know, while similar, it is distinguishable in that
11 the -- one of the critical elements of cold,
12 calculated, premeditated is missing. There's not
13 enough evidence to go to the jury on the capacity --
14 there is evidence to go to the jury on the capacity
15 to engage in a calm, cool reflection and the evidence
16 is he didn't have the capacity to do it. So, the
17 elements -- the cold element as not been established.
18 The only evidence establishes that Mr. Bradley did
19 not have the capacity to engage in such a thought
20 process. It's not -- these are separate elements,
21 they're distinguishable.

22 While the State can argue that there's a
23 careful prearranged plan, that's one of the elements.
24 And the other essential element is it's got to be
25 cold and as defined the only evidence related to that

1 by Dr. Olander is that he did not have the capacity.
2 Not just that he was impaired, he didn't have the
3 capacity to engage in that. So, there's no evidence
4 to go to the jury on that particular aggravating
5 circumstance because of the evidence of -- the
6 testimony of Dr. Olander.

7 THE COURT: Okay. Request by the Defense for
8 judgment of acquittal with regard to number five is
9 denied. I will allow that to go before the jury.

10 Okay. Other arguments on behalf of the Defense
11 as to the first five pages?

12 MR. MOORE: Your Honor, on the issue of, well,
13 cold, calculated, premeditated also that without any
14 pretense of moral or legal justification. Pretense
15 does not mean actual moral or legal justification, it
16 means that there is at least on the surface as
17 believed by the defendant a justification for it and
18 the evidence for that is his belief, whether right or
19 wrong, whether accurate or inaccurate, that he was
20 going to be shot.

21 The evidence for that is in the testimony of
22 Andria Kerchner who says Mr. Bradley said that
23 immediately preceding the shooting, I'm afraid she's
24 going to shoot me, that Mr. Bradley said to the
25 police when being interviewed that was the reason for

1 it, I thought I was going to be shot, that's what he
2 said to Dr. Olander, that's what he said to Dr. Zapf,
3 but more to the point is what Mr. Bradley was heard
4 in saying in the few seconds before the shooting and
5 that is why are you going to shoot me, at least three
6 times. So, it doesn't have to establish in fact that
7 this was a moral or legal justification, a pretense,
8 and the only evidence on that is based upon
9 Mr. Bradley's concern as expressed at the time and
10 subsequently that he was afraid that he was going to
11 be shot and the reasons for it.

12 So, the State -- the only evidence on that it
13 being adverse to the State's position, it should --
14 the Court should grant a directed verdict on that
15 because there's no evidence to go to the jury. The
16 reasonable hypothesis of innocence is that that's
17 what Mr. Bradley believed, whether right or wrong.
18 That's why the word pretense is in there.

19 THE COURT: Okay. Response from State.

20 MR. BROWN: Judge, if you look at the jury
21 instruction, the definition of a pretense, a pretense
22 of moral or legal justification is any claim of
23 justification or excuse that though insufficient to
24 reduce the degree of the murder nevertheless rebuts
25 the otherwise cold, calculated or premeditated nature

1 of the murder. So, the jury would have to find that
2 he believed that that was his pretense. Just because
3 he says it doesn't mean they have to believe it. Our
4 position is the evidence shows it's to the contrary,
5 that that's just simply something he was saying. But
6 even if they find that that was the defendant's real
7 pretense of moral or legal justification that that
8 then rebuts the otherwise cold, calculated or
9 premeditated nature of the murder. So, by its
10 definition it's a jury question. To weigh that, to
11 decide was that really his pretense of moral or legal
12 justification and if so whether that's enough to
13 rebut the otherwise cold, calculated, premeditated
14 nature of the murder and that's a jury question.

15 THE COURT: Okay. The Court does believe that
16 that's a jury question. So, that argument by
17 Defense, Court will not adopt that.

18 MR. MOORE: Your Honor, we also object to the
19 proposed aggravating circumstance of to avoid arrest
20 in conjunction with the victim being a law
21 enforcement officer. That would be doubling the same
22 aspects of the case, that would -- they should be
23 considered as one but actually the Court should not
24 give both to the jury.

25 THE COURT: That's number six and number?

1 MR. MOORE: Four.

2 THE COURT: Four. Okay. State's argument with
3 regard to that.

4 MR. BROWN: Judge, they should both be given to
5 the jury. I will -- there is case law that does
6 indicate that those two aggravating circumstances in
7 the killing of a police officer would constitute
8 doubling. However, the case law is pretty clear on
9 is that you instruct the jury as to those. We've
10 included the doubling instruction in the packet and
11 that's what the Florida Supreme Court requires
12 because there's no telling the jury whether they find
13 one or the other. If they find both, then they can
14 consider both but it's considered one aggravator and
15 that's the extent of it and obviously the Court makes
16 the final decision and if the jury comes back with a
17 recommendation of death, then the Court would combine
18 them in your sentencing order.

19 THE COURT: Where's the doubling instruction?

20 MR. BROWN: Judge, it is following the
21 aggravators, the very next page, the top one, and
22 that's the standard instruction for what doubling
23 that the Florida Supreme Court has put out.

24 MR. MOORE: The problem I have with that, the
25 Court knows going into it that the case law

1 establishes that those are in fact doubling as
2 aggravating circumstances, then the Court should
3 recognize that and remove one of them from the jury
4 instructions.

5 THE COURT: Doesn't the case say that you're
6 supposed to -- I mean, that it's proper to give them
7 both and then?

8 MR. LANNING: Or you instruct the jury that
9 number, you know, that number six and four are
10 doubling because otherwise the jury is left with
11 possibly could say, well, yeah, there are separate --
12 these are separate, we're going to find both of them.

13 MR. MOORE: We'd ask the Court either to strike
14 one of them or to instruct the jury on the law which
15 the Florida Supreme Court has held that the two of
16 them constitute doubling and are to be considered as
17 one and only accordingly as one aggravating
18 circumstance. I mean, that's the law and that's what
19 the courts recognize. The Court is not bound by the
20 standard, Court can take into account whatever the
21 law is and that is the law in this case that those
22 facts constitute doubling and the jury should be
23 informed about that. Because the State will be
24 arguing that they're not and that's not the law, the
25 law is that they are.

1 THE COURT: Okay. Response from the State.

2 MR. BROWN: Judge, we're aware what the law is
3 so we're not going to be arguing that they are --
4 that they're not but the jury has to make a finding,
5 if they find we've proven one and not the other,
6 that's why you give both and there's no case out
7 there that I've seen, I can't imagine that it's there
8 because I've seen the cases that deal with this, that
9 instructs the Court that you do not give one to the
10 jury because then you have to decide which one do you
11 not give. So, the cases are quite clear, you give
12 them both, that's why there is a doubling
13 instruction. If you didn't give the doubling
14 instruction, that would be error.

15 MR. MOORE: That is part of our objection. The
16 other part is if the Court is not going to remove one
17 of those aggravating circumstances, then inform the
18 jury about what they are. What those two aggravators
19 are is they merge into one. I mean, that's what the
20 courts say and it's discretionary with the court. As
21 I said, as the Court knows it's not bound by the
22 standard instructions, the Court can instruct the
23 jury based upon the law and that is the law. If the
24 Court wants a case on that I will be glad to provide
25 it. They should know exactly what --

1 THE COURT: I reviewed some of the cases with
2 regard to this because I thought this might come up
3 and it's my understanding in reviewing the cases is
4 that I have to give both instructions and that you
5 give this doubling instruction and that that's what
6 the case law says is proper. I'm not aware of any
7 case that says not to give the two aggravating
8 circumstances and I'm not aware of any case that says
9 in the doubling instruction to specifically point out
10 which two you're referring to. So, if you know
11 something -- if you have case law out there that says
12 something different, I would be interested in seeing
13 that, but I'm not aware of any case law that says
14 that but I'm open -- I mean, if there's case law out
15 there, then I'm happy to review that.

16 MR. MOORE: Well, would the Court accept that
17 the two are considered to be merged by the Florida
18 Supreme Court and if that's -- if the Court wants a
19 case that holds that, I'll provide it to you.

20 THE COURT: No, I accept that. I accept that.

21 MR. MOORE: Second part of the premise is the
22 Court is not bound by the standard instructions. The
23 Court can fashion an instruction which would
24 accurately reflect the law and if the law says that
25 the two are considered merged, then why should the

1 jury have to even try to sort that out. Why would
2 they be deliberating on that issue which is a non
3 issue because they could, and contrary to the law,
4 they could consider them separately, give them accept
5 weight and which would be contrary to the law and
6 then the damage is done.

7 So, the only way to obviate that is to instruct
8 the jury on the limits that the courts recognize that
9 are placed on these two aggravating circumstances.
10 They are merged and so if that's the law then it's
11 within the Court's discretion and I respectfully
12 request the Court to follow the law and instruct the
13 jury on the limits of their deliberations and what
14 they can do with those two merged aggravating
15 circumstances. Court's discretion. And there's a
16 lot of cases that I know of that says the court has
17 to but again it's discretionary, the Court can follow
18 the law and the Court should with all due respect
19 especially in this case.

20 THE COURT: Okay. I think the instruction says
21 proposed. So, we're not going to make any changes as
22 to those.

23 Anything else from the Defense as to these
24 proposed instructions?

25 MR. MOORE: Getting back to where I was, Your

1 Honor.

2 MR. LANNING: The Court could read both in one.
3 The one paragraph aggravator and not give the second
4 number. And I believe Mr. Bradley's rights under the
5 Florida and US constitution require that.

6 THE COURT: Okay. Response from the State as
7 to that request.

8 MR. BROWN: Judge, the trouble is by doing that
9 then our argument would be the jury would be only
10 finding part of an aggravator which is not the case.
11 So, they may have a tendency to give less weight. I
12 think the Florida Supreme courts covered this not
13 only with these two but in other circumstances where
14 it's doubling and they've said consistently you give
15 both and you give the doubling instruction and I'm
16 just asking the Court follow what the Florida Supreme
17 Court has improve, or approved in numerous cases.

18 THE COURT: Okay. That request by the Defense
19 is denied.

20 MR. MOORE: Your Honor, the basis for our
21 objections to these aggravating circumstances and all
22 the instruction modifications we're asking for the
23 would be the Federal Constitution Amendments 5, 8, 5,
24 6, 8 and 14 the Florida Constitution Article 1,
25 Sections 2, 9, 16, 17, 22, 23. And I'm still looking

1 at the instructions.

2 THE COURT: Do we have these up on the
3 computer?

4 MR. BROWN: Yes.

5 THE COURT: Are they easy to make changes?

6 MR. BROWN: Yes. Well, I believe they are,
7 yes.

8 THE COURT: Paragraph 2, second sentence
9 there's a spacing issue.

10 MR. BROWN: Is that on the list of aggravators.

11 THE COURT: That's the list of aggravators.

12 MR. BROWN: Judge, that one is not easy.

13 THE COURT: Okay. I'm okay if you want to
14 leave it.

15 MR. BROWN: We tried to fix it and I don't know
16 what is in it but we could not fix that and I had a
17 secretary trying to do it and.

18 THE COURT: Everything else has a title, like
19 expert witness, rules for deliberation, aggravated
20 circumstances. When you start mitigating
21 circumstances it doesn't have a title. And is that
22 going -- are we going to put that right after -- is
23 it going to go right into your five pages?

24 MR. BROWN: Yeah, the way I structured it here
25 is we did a page break because we did these

1 instructions, gave them to the Defense yesterday
2 morning and then they sent over to us their list of
3 proposed and so we did a cut and paste. I corrected
4 a few typos.

5 THE COURT: Are you going to make this the --
6 make mitigating start here or have the page break?

7 MR. BROWN: I'm good with keeping the page
8 break I'm worried if I take it away that I may screw
9 up spacing later.

10 THE COURT: Okay. I'm okay with that but do
11 you see what I'm saying?

12 MR. BROWN: The title.

13 THE COURT: Everything else has a title.

14 MR. BROWN: Yes, Your Honor.

15 THE COURT: The mitigating circumstances do not
16 have a title. If you put a title above it and put it
17 in the same spot that you did everything else. See
18 how you did aggravating circumstances? I'm just
19 trying to make it all look the same.

20 MR. MOORE: Okay.

21 THE COURT: Just above mitigating if you'll
22 indent it and put mitigating circumstances because
23 that's what you've done in everything else.
24 Mitigating circumstances, period. And it was done in
25 a little different font.

1 MR. BROWN: Right, that's going to be the...

2 THE COURT: Okay. Tell me when we're done with
3 the first five pages.

4 MR. MOORE: We're done, they're okay with the
5 exception of the objections that I placed on the
6 record.

7 THE COURT: Okay. And then looking at the
8 State's mitigating circumstances, what did you not --
9 was there any objections you had from the Defense's
10 mitigating circumstances?

11 MR. BROWN: Yes. Judge, first I'll make the
12 overall objection first for the list four through
13 twenty-two. One, two and three are statutory and
14 paragraph twenty-three is statutory. Our position is
15 circumstance four through twenty-two are not
16 necessary, they're covered in the catchall provision
17 which is what is referred to in the case law is the
18 catchall, that being number twenty-three which is
19 standard.

20 Judge, for support for that I would cite the
21 Court to Belcher v. state which is found at 851 So.2d
22 678, Florida Supreme Court 2003. Judge, Belcher
23 covers at headnote 5 which is starting at page six
24 through seven and they also cite to a Florida Supreme
25 Court case for their authority. And in this case

1 they -- the trial court considered and denied the
2 list of nonstatutory aggravators proposed by Defense
3 counsel. I would cite to the Court and I took this
4 off of West Law, it's citing page 4, headnote 5.
5 This case has been cited by the Florida Supreme Court
6 six additional times ironically by the Alabama court,
7 but headnote 5 has been cited, and I didn't print
8 each of those cases up but they all cite to Batcher,
9 or to Belcher. Some of these cases are
10 post-conviction, others are on the direct appeal,
11 they're all death penalty cases. Our position is
12 that Belcher, the catchall instruction is sufficient,
13 there's no need to give the laundry list of factual
14 circumstances that Defense provides. They certainly
15 can argue those but the detailing them out I believe
16 is not as sufficient as simply having it. I note
17 that the Defense has asked for the statutory
18 paragraph twenty-three in addition to just leaving
19 them all out. Our position is giving the three
20 statutories they've asked plus the fourth one is
21 sufficient and there's no need to itemize ever
22 particular factual circumstances that they tried to
23 establish.

24 THE COURT: Okay. Response from the Defense.

25 MR. MOORE: Your Honor, I'd point out the

1 recuring language in the concurring opinion of
2 Justice Pariente at page 687 and what she said is the
3 standard catch-all instruction on mitigation provides
4 no guidance on how to determine what factors are
5 mitigating. In particular, facts indicating
6 emotional disturbance, extreme duress, or impaired
7 capacity which fall short of the threshold for
8 statutory mitigation remain potentially significant
9 considerations in a jury's advisory sentence.

10 I would also offer the case of Duest,
11 D-U-E-S-T, State, Florida Supreme Court decision
12 June 2003, 855 s02D 33. If I may approach.

13 THE COURT: Yes, you may.

14 MR. MOORE: In particular I'd ask the Court to
15 consider the language on page seven in which the
16 Court -- well, list the instruction that was -- for
17 the proposition as stated in headnote 5, 4 and 5, in
18 ruling on requests for instructions on mitigating
19 circumstances, the trial court's exercise in
20 discretion is guided by precedent holding that a
21 defendant is entitled to have the jury instructed on
22 a mitigating factor if there's any evidence to
23 support the instruction and that is in the context of
24 statutory -- mitigating circumstances were denied but
25 there's a basic rule of law which is if any evidence

1 has been presented which supports an instruction, the
2 defendant is entitled to it.

3 The other case is Downs versus State, 801 906,
4 Downs versus Moore I should say, 801 906, Florida
5 Supreme case from 2001. If I may approach with that?

6 THE COURT: Yes, you may.

7 MR. MOORE: In this case the trial -- this is
8 review of the trial court's denial of a request for a
9 list of enumerated nonstatutory mitigating
10 circumstances and the language is from the concurring
11 opinion of Justice Anstead at page nine of this
12 opinion. He says -- he's expressing his concerns
13 with the adequacy of the catchall provision of the
14 jury instructions for mitigating evidence. He says
15 he has particular concern as to whether the brief
16 instructions provided sufficient guidance as to what
17 nonstatutory mitigation the jury can properly
18 consider during deliberations.

19 It references Furman v. Georgia which reviewed
20 the sentencing scheme of Georgia and Texas in that
21 they provide the sentence with sufficient with
22 respect to mitigation. They found their statutory
23 scheme is constitutional.

24 In headnote 919 it says the Supreme Court has
25 repeatedly held that the sentencing process must

1 include an individualized assessment of the character
2 and record of the offender as well as the
3 circumstances of the offense. In other words, for a
4 death penalty scheme to meet constitutional muster,
5 it must provide the sentencer the opportunity to
6 consider and give effect to relevant circumstances
7 surrounding the offense.

8 Then I'd ask the Court to consider on page ten
9 of this opinion talking about Penry II, Florida U.S.
10 Supreme Court case in which Henry held that the trial
11 had misunderstood its direct -- and again finding
12 those mitigating circumstances inadequate. The court
13 found the mitigating circumstances to be inadequate.
14 This is the language that he takes from that, Justice
15 Anstead. I did not hold that the mere mention of
16 mitigating circumstances to a capital sentencing jury
17 satisfies the Eighth Amendment. Nor does the stand
18 for the proposition that it is constitutionally
19 sufficient to inform the jury that it may consider
20 mitigating circumstances in deciding the appropriate
21 sentence. Rather, the key under Penry I is that the
22 jury be able to consider and give effect to the
23 defendant's mitigating evidence in imposing sentence.
24 And I want to read a little bit more because it
25 should help the Court in making that decision. For

1 it is only when they jury is given a vehicle for
2 expressing its reasonable moral response to that
3 evidence in its sentencing decision, that we can be
4 sure that the jury ha treated the defendant as a
5 uniquely individual human being and has made a
6 reliable determination that death is the appropriate
7 sentence. This is the key in the case.

8 In the next paragraph down it says juries are
9 provided with specific guidance as to the type of
10 nonstatutory mitigating factors that they may
11 consider. Because the overly brief catch-all jury
12 instruction neither mentions nor defines the various
13 categories of nonspecific mitigation a Florida jury
14 may consider, it may well be inadequate to provide
15 for the type of individualized assessment of
16 mitigation that the Supreme Court has mandated. The
17 fact that the aggravation to be considered by a jury
18 is highly specific underscores the problem. So, we
19 have a list of six of those that the State is
20 providing. Florida statute 921.141 clearly
21 identifies fourteen aggravating factors, which
22 included everything from the nature of the crime and
23 criminal record of the accused to the age and
24 frailties of the victim. On the other hand, the
25 brief catch-all provision by its very brevity and

1 general nature may actually diminish the jury's
2 consideration of particular mitigation.

3 That's the problem here. To say that this is
4 it not a counting matter, it certainly becomes one
5 when the State's got a list as long as the State has
6 and we're prevented from having specific reference to
7 matters that we have proven and there is evidence to
8 support each one of the mitigating circumstances on
9 this list, otherwise, they don't give the proper --
10 the jury cannot give the proper consideration to what
11 we bring up and try to crawl out of this catch-all
12 jury instruction, they would be inclined to look at a
13 list which is a stamp of approval when it comes from
14 the Court and it's on a piece of paper that the Court
15 has read to the jury and when all we have is this
16 other basically generic all other circumstances, and
17 then you have the mitigating circumstances related to
18 the defendant's character and background and
19 circumstances of the case. And so it's in effect
20 the -- a direction by the Court, a directed verdict,
21 so to speak, that the only aggravating mitigating
22 circumstances for the jury are the ones on the list
23 and one of them the six and that's the State's
24 aggravating circumstances, but as to the mitigating
25 it's generic except, you know, for whatever a list of

1 specific mitigating circumstances we read to them
2 which are not on that list. So, it's like a stamp of
3 approval from -- and that's what Justice Anstead
4 recognized, that there are specific aggravating
5 circumstances, they're limited, they're read to the
6 jury and the jury focuses on those and to not do the
7 same with the mitigating circumstances does not focus
8 the jury's attention as it should as the State has
9 the jury's attention with the list of specific
10 aggravating circumstances.

11 MR. BROWN: Judge, I want to point out the
12 Downs case, the last one Defense counsel cited that
13 he read extensively from, was from the concurring
14 opinion. If the Court looks at page five of the copy
15 that he provided to you, go down a little bit past
16 the halfway point in the paragraph right after where
17 they have an indent for number four. It says this
18 court has held that the catch-all standard jury
19 instruction on nonstatutory mitigation when coupled
20 with counsel's right to argue mitigation is
21 sufficient to advise the jury on nonstatutory
22 mitigating circumstances. That's from the majority
23 opinion, as Belcher says it, as all the other cases
24 say it and the issue is counsel says, well, the State
25 has their list, we have a statutory list, we're

1 limited to that, we don't have the catch-all that you
2 can consider all other circumstances.

3 What they're in effect wanting the Court to do
4 is now to start specifically commenting on every
5 circumstance that they were able to come up and bring
6 out and they're going to argue to the jury that these
7 additional circumstances are mitigating. They're
8 allowed to do that, but I don't think it's -- I'm not
9 going to say it's improper because I've not found,
10 which I don't believe there's going to exist, a case
11 that says it's improper and reverses, I don't know
12 what you'd reverse, but it says it's improper for the
13 court to do it, but what we have is all the case law
14 that says the Court doesn't have to do it, that list
15 the statutory mitigation coupled with the statutory
16 catch-all phrase is sufficient. And, otherwise, you
17 know, the Court's had a chance to look over their
18 list of four through twenty-two and in effect what
19 they're asking the Court to do is to be commenting on
20 every piece of evidence that they brought in and
21 that's what our position is. One, two and three are
22 statutory, number twenty-three is statutory and
23 that's sufficient.

24 MR. MOORE: Your Honor, it's not --

25 THE COURT: Mr. Moore, I'm going to allow the

1 mitigating circumstances. Okay.

2 MR. BROWN: Judge, I have specific objections
3 now to the way they're worded the various ones.

4 THE COURT: If someone's making the changes,
5 there's two number threes. Did we change that?

6 MR. MCMASTER: I believe it's already been
7 changed.

8 THE COURT: The second one should be number
9 four. And there's no periods after number four and
10 there's no periods after number five.

11 Okay. Then Mr. Brown.

12 MR. BROWN: Judge, going down, number --
13 starting with number thirteen. Find my pen here.
14 Judge, our position is it ought to end, if the
15 Court's going to give it, the defendant suffers from
16 brain damage and brain functional deficits. They
17 shouldn't be citing in the jury instruction to the
18 evidence that -- the jury instruction ought not to
19 include the evidence that they're going to argue
20 supports that and I think it's improper for the Court
21 to be commenting on evidence, so. None of the
22 statutory aggravators or mitigators in any form has
23 ever laid out an instruction where you then cite to
24 the evidence that supports it. The mitigator here
25 is -- that they're going to argue is the brain damage

1 and brain functional deficit and it should be a
2 period and end there.

3 THE COURT: Okay. Response from the Defense.

4 MR. MOORE: Your Honor, it's a given because
5 the Court instructs the jury that these are
6 considered the guidelines and the jury makes the
7 determination whether they are in fact established by
8 the respected evidence. So, this isn't a directed
9 verdict to the jury, this is in the context of the
10 jury instruction that the jury can reject, they can
11 reject these or they can accept them. I mean, the
12 jury knows what their role is. So, this doesn't
13 confuse or mislead them, they heard the evidence,
14 it's unrebutted and so -- I mean, that's where that
15 comes from, but the jury knows what to do with it.
16 They can accept it, they can reject it.

17 MR. BROWN: The trouble is the Court should not
18 be citing to particular evidence in instructions and
19 that's what they're asking for you to do here and the
20 mitigator is the brain damage and brain functional
21 deficit. The Court should not then be telling the
22 jury what evidence supports that, that's up to them
23 to argue and for the jury to find. So, that's my
24 objection to number thirteen.

25 THE COURT: Okay. I'm going to make the change

1 as requested by the State. I'm going to start it
2 after -- I'm going to stop it after deficits.

3 MR. BROWN: Judge, number fourteen, if I may
4 proceed.

5 THE COURT: Okay.

6 MR. BROWN: Same argument. It should read the
7 defendant suffered head injury and possible traumatic
8 brain injury, period. And same argument so I'm not
9 going to restate it.

10 THE COURT: Okay. Response from the Defense.

11 MR. MOORE: I could have listed each one of
12 those alleged blows to the head separately but I
13 chose to put them all under one heading and so -- I
14 mean, you know, they either were head injuries are
15 they weren't and that's for them to determine and
16 decide it's mitigation and decide what weight to give
17 to it. It doesn't say who testified, it doesn't say
18 what the evidence was in particular, it just says
19 head -- blows to the head on those three occasions,
20 they can reject that if they want to.

21 MR. BROWN: Judge, these are very descriptive,
22 it lays it out, you know, the jury's heard from
23 numerous witnesses, I don't think they are suffering
24 from any lack of knowledge as to the three instances
25 the Defense claims that could have caused any head

1 injury. Again, to be citing them out, citing
2 specifically which accidents, possible loss of
3 consciousness, being hit in the head with a metal
4 lock. I mean, they've heard it, I went over it
5 extensively in cross, they've covered it in direct.
6 So, again, I think just saying the mitigator is that
7 head injury and brain injury.

8 THE COURT: You know, I tend to agree that
9 it's -- the mitigator is the defendant suffered head
10 injury and problem traumatic brain injury. So, I'm
11 going to stop it after that.

12 MR. BROWN: Judge, number fifteen. First, I
13 believe that it was 2011 the testimony was, not 2012.

14 MR. MOORE: I agree.

15 THE COURT: So, that needs to be corrected and
16 my position would be same argument that it ought to
17 end he was shot to death. And again, it's up to the
18 jury to -- the Defense to argue -- the jury to
19 determine what impact it had on the defendant.

20 MR. MOORE: Your Honor, the fact is there was
21 an impact on the defendant and in fact this is an
22 allegation, this isn't an instruction to the jury and
23 they can accept or reject it. Not just a losing the
24 cousin, that doesn't fit, what's mitigating is the
25 impact on the defendant and how he responded to it

1 and the jury has an obligation to consider it, the
2 whole scenario, not only what happened but the impact
3 on the defendant and accept or reject it.

4 THE COURT: Okay. On that one I think it will
5 be appropriate to end it after defendant. Was shot
6 to death which had a devastating emotional and
7 psychological impact on the defendant, period.

8 MR. BROWN: Judge, number sixteen, I don't know
9 a way to rewrite this other than as proposed. It's
10 asking the Court to be commenting on the evidence.
11 This is, I think, part of the problem with trying to
12 list out and do, my own term for it, it's not
13 something I read from case law, but kind of a laundry
14 list. You get instructions like number sixteen. So,
15 I object to sixteen in its entirety, I think that's
16 covered by the catch-all. I don't know a way to
17 rewrite that that's not going to have the Court
18 commenting on the effect and everything else. So, I
19 object to sixteen in its entirety and object to it as
20 written.

21 MR. MOORE: Your Honor, it's a fact, it's
22 undisputed, I present the jury can do with it as they
23 are required to do, they can accept it or reject it
24 and the fact is he had a relationship with this woman
25 and it involved a loving relationship. There's no

1 rebutting that. However, the jury can decide whether
2 that is true or not. She had a miscarriage that
3 after -- shortly after that the death of a cousin and
4 both profoundly affected the defendant and so we
5 could take out the adjective profoundly if that is
6 too subjective.

7 THE COURT: I have a problem with loving too.

8 MR. MOORE: She said that.

9 THE COURT: Did she actually use the word
10 loving?

11 MR. MOORE: She did. I asked her what her
12 feelings were about Mr. Bradley, she said she loved
13 him, that's what she said.

14 THE COURT: Yeah, but we don't know if Mr.
15 Bradley loved her, that's a loving relationship.

16 MR. MOORE: Loving relationship, it doesn't
17 have to be limited from, you know, one person to the
18 other. I mean, one person in the relationship --

19 THE COURT: And they said it was on and off.

20 MR. MOORE: Well, she used the words --

21 THE COURT: I have an issue with the word
22 loving.

23 MR. MOORE: She -- relationship, take the word
24 loving out.

25 MR. BROWN: See, Judge, that's kind of my

1 problems is that the whole paragraph, there's
2 multiple issues and I don't think there's a way to
3 fix this that's not having the Court comment or give
4 some indication to the jury. So, I move sixteen to
5 be stricken in its entirety. They can certainly
6 argue this. I'm not making anything that they can't
7 argue it.

8 MR. MOORE: You know, the problem is any
9 instruction subject to that criticism --

10 THE COURT: Well, I'm going to change some of
11 it. I'm going to change some of it. The defendant
12 had a two year relationship with Carrie Ellison
13 during which she became pregnant with his child. She
14 miscarried a few days after the death -- and was it a
15 few days?

16 MR. BROWN: I thought it was the death is what
17 the testimony was, the day of.

18 THE COURT: She miscarried I think the day of
19 the funeral so that was probably a few days after the
20 death.

21 MR. MOORE: She said a few days afterwards.

22 THE COURT: Okay. I'll leave that. She
23 miscarried a few days after the death of Travontey
24 Williams, period.

25 MR. BROWN: I don't think anything after that

1 ought to be given.

2 MR. MOORE: Which emotionally affected the
3 defendant. There was testimony about that, that's
4 what she said and that's part of the mitigating
5 circumstances. So what if that happens, if somebody
6 dies and there's a miscarriage, how does that relate
7 to the defendant unless the evidence also connects
8 with that the impact on the defendant. That's what's
9 mitigating, Your Honor. I mean, that's an aspect of
10 his life, his background, his character.

11 MR. BROWN: But the mitigator is the fact that
12 it happened. The jury -- they can argue, the jury
13 determines what effect and how much weight to give
14 it.

15 THE COURT: Okay. This is -- I changed the
16 second. The defendant had a two year relationship
17 with Carrie Ellison during which she became pregnant
18 with his child, period. She miscarried a few days
19 after the death of Travontey Williams, period.
20 Thereafter, comma, the defendant began a period of
21 significantly greater drug abuse, period. Okay.
22 Mr. Brown.

23 MR. BROWN: Judge can we hang on just one
24 minute? We're doing the typos as we go so I don't
25 want to get ahead of Mr. McMaster.

1 (Thereupon, a pause was taken in the
2 proceedings.)

3 MR. BROWN: Judge, we're going to have --
4 there's going to be a space like in the one
5 aggravator. The last line there's a period of
6 significant and then greater drug abuse is on the
7 next line and it's indented in and we can't seem to
8 get rid of it, so.

9 THE COURT: Okay.

10 MR. BROWN: Judge, number seventeen, I have the
11 same objection to as far as, you know, if they want
12 to say he became -- the defendant was paranoid or
13 something like that, but saying the specific belief
14 that a hit was placed on his life, obtained a gun to
15 protect himself, those are factors to support the
16 argument of the mitigation and I believe the paranoia
17 has already been covered in -- because that was what
18 Dr. Olander is relying upon for he's under the
19 influence of extreme mental or emotional disturbance
20 and it's covered in the other ones. So, I don't
21 believe it needs to be covered again, but if it is I
22 think number seventeen ought to be rewritten as well.

23 MR. MOORE: Your Honor, I separated these
24 because they deal with two separate aspects and one
25 is the response following the mis -- the death of

1 Travontey Williams in sixteen -- what I would suggest
2 is that --

3 THE COURT: Okay. This is how I changed it,
4 you can tell me if you object. Following the loss of
5 his cousin and his girlfriend's miscarriage, the
6 defendant appeared to be distrustful of the motives
7 of others, paranoid, and -- well, you can take out
8 the and, paranoid, belief that a hit was placed on
9 his life and obtained a gun to protect himself. Do
10 you have any objection to that?

11 MR. BROWN: Judge --

12 THE COURT: Took out increasingly and I put
13 appeared to be.

14 MR. BROWN: Right. I appreciate the Court's
15 changes but ultimately, I mean, this is just an
16 extension of what fifteen and sixteen were and it's
17 the Court telling the jury what the changes were,
18 what the effects were and that's the essence of our
19 objection to it. We've already covered the loss.

20 THE COURT: Well, it's different because it
21 talks about him obtaining a gun and it talks about
22 being paranoid.

23 MR. BROWN: I agree, but again this should not
24 be a laundry list of every little thing they brought
25 out, so. That's back to my -- the essence of my

1 objection to all of these in general but, you know.

2 THE COURT: Okay. Response from the Defense.

3 MR. MOORE: Your Honor, it deals with two
4 events in his life which had a profound effect on
5 him. I'm not asking for the word profound, it did
6 have an effect on him.

7 THE COURT: Okay. Response to my changes.

8 MR. MOORE: Which?

9 THE COURT: Object to my changes.

10 MR. MOORE: Oh, as to seventeen?

11 THE COURT: Yes.

12 MR. MOORE: Taking out appeared?

13 THE COURT: I took out increasingly and I took
14 out became increasingly, I put in appeared to be.

15 MR. MOORE: No objection.

16 MR. BROWN: Judge, could the Court reread it,
17 please.

18 THE COURT: Following the loss of his cousin
19 and his girlfriend's miscarriage, the defendant
20 appeared to be distrustful of the motives of others,
21 paranoid.

22 MR. BROWN: Hang on one second, please.

23 THE COURT: And the rest remains the same.

24 Where is says became increasingly, the first became
25 increasingly, put appeared to be and then take out

1 the second increasingly.

2 MR. BROWN: Then ends with belief that a hit
3 was placed on his life and obtained a gun to protect
4 himself.

5 MR. MCMASTER: And believed a hit.

6 THE COURT: Actually when I reread it I don't
7 think it is an and.

8 MR. BROWN: Okay.

9 THE COURT: I mean, it could be because it's
10 the third. I mean, I think grammatically there
11 should be an and.

12 MR. BROWN: Okay. Judge, for number eighteen,
13 our position is it ought to end after murdered or
14 died.

15 MR. MOORE: Which one is that? That's the
16 other part of that, that is mitigation. The event
17 and the effect on the defendant, that's mitigation.
18 There was testimony about that.

19 THE COURT: I know but I have a problem with --
20 which -- I would like it better if it said appeared
21 to be, appeared to emotionally effect. Appeared.

22 MR. MOORE: I accept that.

23 THE COURT: You've got --

24 MR. BROWN: Judge, again, my position is the
25 mitigator is the event, the effect it had is to be

1 argued and determined by the jury, the Court should
2 not be instructing them on the effect.

3 MR. MOORE: Your Honor, this is the same
4 objection to any instruction the Court gives. This
5 is no more --

6 THE COURT: Okay. I'm --

7 MR. BROWN: In the standard mitigators they
8 don't talk about the effect, they just lay it out.

9 MR. MOORE: They do in the aggravating
10 circumstances. I mean, it's all going to be reviewed
11 by the same --

12 THE COURT: Okay. Number eighteen, I
13 understand the objections. They're the same
14 objections just in different form.

15 Number eighteen. Several of the defendant's
16 friends and relatives were murdered or died which
17 appeared to emotionally affect, not affected, affect
18 the defendant.

19 Okay. Number nineteen.

20 MR. BROWN: Number nineteen, Judge, what we
21 object to that is the jury -- they already have a
22 separate instruction, they've been told on the
23 psychotropic medication to start with. There's been
24 no testimony from the doctor who prescribed it what
25 his diagnosis was. I don't believe Dr. Olander

1 testified as to what that doctor was finding, what he
2 was doing his prescription for or any contact she had
3 with him. We've already covered her findings. So,
4 this would be in effect what the psychologist at the
5 jail, his findings were and are. He hasn't
6 testified, there's been no evidence as to that.

7 THE COURT: I'm inclined to stop that that the
8 defendant has diagnosed with and is being treated for
9 mental disorders.

10 MR. MOORE: Well, Dr. Zapf testified about the
11 meds. I asked her about it, what they were for and
12 she although disagreed with the (unintelligible),
13 she's a psychologist, she's not a medical doctor, she
14 did acknowledge that they were -- the medication is
15 specifically prescribed for the -- for auditory and
16 visual hallucinations. And Dr. Olander testified
17 that there in her --

18 THE COURT: Yeah, but it doesn't say any of
19 that. I mean.

20 MR. MOORE: Well --

21 THE COURT: There's no definition as to what
22 cognitive disorder NOS, psychotic NOS.

23 MR. MOORE: That was the testimony of
24 Dr. Olander, that's what she said was the diagnosis
25 of Mr. Bradley.

1 MR. BROWN: Right.

2 MR. MOORE: And all witnesses agree and
3 testified on it that he being currently treated with
4 psychotropic medication which is specific for
5 auditory and -- psychotropic medication for auditory
6 visual hallucinations.

7 THE COURT: I mean, I agree about the
8 psychotropic medications. You can say the defendant
9 has been diagnosed with and is being treated for
10 mental disorders with psychotropic medications, I
11 don't have an issue with that.

12 MR. MOORE: And list them.

13 THE COURT: My problem is that that was based
14 on --

15 MR. MOORE: Doesn't say what the meds are
16 specifically for if that's the problem, but I don't
17 see how that would be a problem because all the
18 witnesses who have testified on it agree that he's
19 got mental disorders and that he's been specifically
20 treated with psychotropic meds and these are the
21 specific ones. So, it goes hand-and-hand. It's
22 un rebutted. Dr. Olander said that --

23 THE COURT: I'm just saying I don't think you
24 need to be -- if you say -- they can determine -- I
25 don't have -- I propose this. The defendant has been

1 diagnosed and is being treated for mental disorders
2 with psychotropic medications. If you list all of
3 them then you're --

4 MR. MOORE: Okay. That's fine.

5 THE COURT: Number twenty.

6 MR. BROWN: Judge, twenty and twenty-one, other
7 than my general objection I don't have a specific to
8 those two.

9 THE COURT: Okay.

10 MR. BROWN: Number twenty-two, I have an
11 objection to that one. I think, you know, it' --
12 they could argue his cooperation with law
13 enforcement, I think that's kind of a debatable
14 argument. But certainly confessed to all of the
15 offenses which he has been convicted, I disagree with
16 that, I don't think the Court ought to put that in.
17 It ought to end he was cooperative with law
18 enforcement and then.

19 THE COURT: What about the second part of
20 twenty-two? How do you read W-A-I-S-K.

21 MR. MOORE: Wait, I've got a numbering issue
22 here. We talking about the Defendant's full scale
23 IQ, that one?

24 MR. BROWN: No, number twenty-two.

25 THE COURT: He agreed to twenty and twenty-one.

1 He agreed to twenty and twenty-one other than his
2 general specific -- I mean his general objection.

3 How do you read W-A-I-S-K.

4 MR. MOORE: That's the Wechsler Adult
5 Intelligence Scale.

6 THE COURT: How do you say it?

7 MR. MOORE: Wechsler Adult Intelligence Scale.

8 THE COURT: Wechsler. If you don't tell me how
9 to say it I'm going to spell it.

10 MR. BROWN: Judge, I would just spell it
11 because that's the acronym.

12 THE COURT: That's what -- I mean, it looks
13 like it --

14 MR. MOORE: W-A-I-S, there's a C in there.

15 MR. BROWN: The C should not be in.

16 THE COURT: The C should not be in?

17 MR. BROWN: You agree?

18 MR. MOORE: No.

19 THE COURT: WAIS V, I mean IV.

20 MR. MOORE: IV. We can take the C out. I
21 think it's correct. Without the C, yeah, we'll take
22 the C out.

23 THE COURT: And then number twenty, the part
24 he's objected to is the second part and confessed to
25 all of the offenses of which he has been convicted.

1 MR. MOORE: Which is part of the cooperation
2 and did he do that. Actually he was arrested, there
3 is no evidence he did not cooperate with the police.

4 THE COURT: Did he confess to all the offenses?

5 MR. BROWN: Judge, I don't believe he confessed
6 to the fleeing, I don't believe he --

7 THE COURT: I was going to say, I was thinking
8 of the fleeing too.

9 MR. BROWN: Right. And I don't believe he
10 established and confessed the robbery portion, nor to
11 the taking.

12 MR. MOORE: Let's take out the two specific
13 crimes that he confessed because he did do that, he
14 talked freely about what happened.

15 MR. BROWN: I think just should be cooperative
16 with law enforcement, period, and then we can argue.

17 MR. MOORE: He confessed. He confessed. I
18 mean, that was an issue of voluntariness of the
19 confession that's been placed before the jury. They
20 didn't ask him about the fleeing and eluding but he
21 did confess. I mean, he gave a full statement to the
22 police.

23 THE COURT: You can't say -- he didn't confess
24 to all the crimes. So what do you want and
25 confessed, period?

1 MR. MOORE: That's acceptable.

2 THE COURT: And then twenty-three.

3 Okay. Is mitigates listed capitalized in
4 twenty-three?

5 MR. BROWN: Probably should not be.

6 MR. MCMASTER: Not anymore.

7 THE COURT: Not anymore? I was just wondering
8 what the standard instruction did.

9 MR. MOORE: We can put lower case.

10 THE COURT: Okay. Then let's go to the second,
11 the second and third pages. I'm assuming that's all
12 standard?

13 MR. BROWN: Yes, Your Honor.

14 THE COURT: Response from the Defense.

15 MR. MOORE: Where are we now?

16 THE COURT: Second and third pages.

17 MR. MOORE: The one that starts with if one or
18 more aggravating?

19 THE COURT: Yes, sir.

20 MR. MOORE: No objection.

21 THE COURT: To the second and third or just --
22 read that whole two pages and tell me if you have any
23 objections.

24 MR. MOORE: No objection to the one that starts
25 if one or more aggravating circumstance. We're

1 objecting to the other one on the other hand and no
2 objection to three.

3 MR. BROWN: Judge, you should have in your
4 packet -- we made a correction on the verdict form,
5 should simply read the last choice should be without
6 possibility of parole period, correct? I think I
7 swapped it out with yours.

8 THE COURT: Mine says without possibility of
9 parole, period.

10 MR. BROWN: Thank you.

11 THE COURT: While he's doing that, who's going
12 to do the closing for the State?

13 MR. BROWN: Judge, the -- Mr. McMaster will.
14 Somehow we lost -- we had it done but the verdict
15 form needs to read by a vote of blank to blank.

16 THE COURT: That's right.

17 MR. MCMASTER: I'll have that momentarily.

18 MR. BROWN: Judge, here are the mitigators.

19 THE COURT: All right. Let me check the
20 mitigating. Good job on the title with the right
21 font and slant.

22 MR. BROWN: I supervised Mr. McMaster for that.

23 THE COURT: That's good.

24 MR. BROWN: I did nothing, he did it all.

25 THE COURT: Okay. Looks like those are all the

1 changes that we talked about. We working on the
2 verdict form?

3 MR. BROWN: Yes, Your Honor.

4 MR. MCMASTER: Just to confirm, Judge, the
5 State will have the initial opening and then the
6 Defense goes and the State does not have a rebuttal?

7 THE COURT: Right. So, how long do you
8 anticipate your closing statement to be?

9 MR. MCMASTER: Approximately a half hour.

10 THE COURT: Mr. Moore, any objection to this?

11 MR. MOORE: The first one?

12 THE COURT: Yes. They made a change.

13 MR. MOORE: No objection. May I approach?

14 THE COURT: Yes, you may.

15 MR. MOORE: Thank you.

16 THE COURT: How long does the Defense
17 anticipate their closing statement to be?

18 MR. MOORE: I...

19 THE COURT: Okay. What I'm going to ask is
20 that you try to limit it to -- I mean, if you go over
21 an hour, try to limit it to an hour. I think an hour
22 would be appropriate. I'm not going to stop you. If
23 you're an hour and twenty minutes, I probably will.

24 Anything else we need discuss on behalf of the
25 State?

1 MR. BROWN: No, Your Honor.

2 THE COURT: Anything else on behalf of the
3 Defense?

4 MR. MOORE: I would like to take a moment
5 before we launch into closing.

6 THE COURT: Okay. We're going to take a ten
7 minute break. We're going to do closing by the State
8 and closing by the Defense, probably break for lunch,
9 come back, do the jury instructions and then go into
10 deliberation. Any questions or concerns at this
11 time?

12 MR. MOORE: No.

13 THE COURT: Okay. Let's say be back here at
14 10:35 and if we'll round up the jury and have them
15 ready at 10:30. Okay. Court will be in recess until
16 10:35. Thank you.

17 (Thereupon, a short recess was taken in the
18 proceedings.)

19 THE COURT: If we can bring out Mr. Bradley.

20 (Thereupon, the defendant was escorted into
21 courtroom by the court deputy.)

22 THE COURT: Okay. Anything that we need to
23 address on behalf of the State before we bring the
24 jury into the courtroom?

25 MR. MCMASTER: No, Your Honor.

1 THE COURT: Anything on behalf of the Defense?

2 MR. MOORE: No.

3 THE COURT: The podium, excuse me, the podium
4 needs to be facing the jury for closing statements.
5 Okay. We can bring the jury into the courtroom.

6 (Thereupon, the jury was escorted into the
7 courtroom by the court deputy and the proceedings were had
8 as follows:)

9 THE COURT: Please be seated. Good morning,
10 ladies and gentlemen of the jury.

11 THE JURY PANEL: Good morning.

12 THE COURT: Has anyone read or been exposed to
13 reading newspaper headlines and/or articles relating
14 this trial or its participants?

15 THE JURY PANEL: No.

16 THE COURT: Has anyone seen or heard
17 television, radio or Internet comments about this
18 trial?

19 THE JURY PANEL: No.

20 THE COURT: Have you read any news headlines
21 and/or articles related to this trial or its
22 participants?

23 THE JURY PANEL: No.

24 THE COURT: Has anyone conducted or been
25 exposed to any research regarding any matters

1 concerning this case?

2 THE JURY PANEL: No.

3 THE COURT: And have you discussed this case
4 among yourselves or with anyone else or allowed
5 anyone to discuss it in your presence?

6 THE JURY PANEL: No.

7 THE COURT: Okay. Other witnesses on behalf of
8 the Defense.

9 MR. MOORE: Your Honor, at this time the
10 Defense would rest.

11 THE COURT: Okay. Thank you.

12 Okay. Ladies and gentlemen of the jury, both
13 the State and the Defense have now rested their case.
14 The attorneys will now will present their final
15 arguments. Please remember that what the attorneys
16 say is not evidence or your instruction on the law.
17 However, do listen closely to their arguments, they
18 are intended to aid you in understanding the case.
19 Each side will have equal time.

20 Okay. Closing statement on behalf of the
21 State.

22 MR. MCMASTER: May it please the Court,
23 counsel, ladies and gentlemen of the jury. Why the
24 death penalty? More appropriately, why is the death
25 penalty the appropriate sentence in this case under

1 these facts. This is not a vote or a referendum on
2 whether the death penalty is an appropriate sentence
3 or an appropriate punishment for the crime of first
4 degree murder, Florida legislature has already
5 declared with the enactment of the death penalty
6 statute that it is an appropriate punishment. If you
7 think that that decision should be changed somehow,
8 you should take that up with your legislatures, your
9 state senators, your congressmen, is not a decision
10 for this particular courtroom and in this particular
11 court case. The question before you is is the death
12 penalty the appropriate penalty for this man under
13 these specifics facts.

14 Before you answer that question we really
15 should discuss the process like Mr. Brown went
16 through with you during jury selection of how do you
17 get to the point of answering that question in this
18 case. Remember that the starting point is that not
19 every first degree murder case qualifies for the death
20 penalty. Just because a verdict of guilty has been
21 rendered of first degree murder even if it is a
22 premeditated murder, it does not in and of itself
23 qualify the case for a possible death sentence. The
24 legislature requires more. It requires that the
25 State must prove something more than just first

1 degree murder and that something is an aggravating
2 circumstance. The legislature set out in detail what
3 would qualify as an aggravating circumstance which if
4 proven beyond a reasonable doubt to you would qualify
5 the case as a possible death penalty case.

6 Now, while the legislature set out a number of
7 possible different aggravating circumstances in the
8 statute, it also provided that it only takes one to
9 qualify the case as a possible death penalty case.
10 As Mr. Brown discussed with you during voir dire,
11 this is the point in the trial that you will begin
12 your process of determining if the case qualifies for
13 the death penalty.

14 The first step is to determine whether the
15 State has proved at least one aggravating
16 circumstance beyond a reasonable doubt. If the State
17 has done so you must then determine whether that
18 aggravating circumstance or a combination of
19 aggravating circumstances that you may believe exist
20 justifies the death penalty. As he told you when he
21 selected you as jurors, you make that initial
22 balancing decision. If the aggravators exist you
23 look at them and say does that justify imposing a
24 death sentence. If you say no, the aggravators alone
25 don't justify a death sentence, then your verdict

1 would be for a life sentence without the possibility
2 of parole. If you say yes, the aggravating
3 circumstances do justify the death penalty, you then
4 go to the next step that he explained to you and your
5 next step would look to see whether any mitigating
6 circumstances have been proven.

7 Now the aggravating circumstances as Mr. Brown
8 told you when we did the jury selection have to be
9 proven beyond a reasonable doubt. You'll hear from
10 the Judge in the jury instructions that the
11 mitigating circumstances do not need that high level
12 of proof, they only need the greater weight of the
13 evidence. So, you can determine whether or not
14 mitigating circumstances exist on that lower
15 standard.

16 Assuming one or more mitigating circumstances
17 have been proved, you then would proceed to the next
18 step which is to determine if the mitigating factors
19 or mitigating circumstances outweigh the aggravating
20 circumstances. Once again, if you make the decision
21 that the mitigation, the mitigation outweighs the
22 aggravators, if the mitigating circumstances outweigh
23 the aggravating circumstances, then your decision
24 should be for life. If not, if in fact the
25 mitigators do not outweigh the aggravators, then this

1 case qualifies for the death penalty. You must at
2 that point determine whether you would recommend the
3 death penalty or life imprisonment without the
4 possibility of parole.

5 Now that we've reviewed the process of how you
6 get to the point of answering the questions that we
7 started out with, let's look at the testimony that we
8 have heard in this case as it relates to the
9 aggravating circumstances first and then we'll
10 discuss some of the mitigating circumstances.

11 The State has alleged six aggravating
12 circumstances, six statutory aggravating
13 circumstances have been proved beyond a reasonable
14 doubt in this case. The first one the
15 (unintelligible) because what you'll hear from the
16 Judge although there are six that are alleged by the
17 State to have been prove, two of them may be combined
18 into one factor because they rely on the same fact
19 that a law enforcement officer was killed, but there
20 would be from the State's assertions five separate
21 aggravating circumstances for you to consider.

22 The first one is that the victim of the capital
23 felony was a law enforcement officer engaged in the
24 performance of her official duties. There's not
25 really much doubt about that, you've answered those

1 questions already in the verdicts that you returned
2 in the guilt phase of this case. Clearly you
3 answered a murder verdict form that Barbara Pill was
4 a law enforcement officer in the resisting without --
5 or resisting with violence charge and the other
6 count. You also found that she was in the
7 performance of her lawful duties at the time of the
8 resisting in that charge. But even without your
9 prior verdict, remember back to the testimony in this
10 case.

11 Clearly Jim Troup had worked with Deputy
12 Barbara Pill for a number of years at the sheriffs
13 office in the south section, they worked together,
14 wore uniforms, ride in marked patrol cars, responding
15 to calls and clearly on March 6th of 2012 at the time
16 she was shot dead, she was in the performance of her
17 official duties investigating the incident that
18 occurred at the EconoLodge, investigating the robbery
19 that had happened there and trying to apprehend the
20 suspects in this case, Mr. Bradley and Miss Kerchner.
21 Clearly there has been proof beyond any reasonable
22 doubt that that aggravating circumstance exists in
23 this case.

24 Second aggravating circumstances is that the
25 capital felony was committed by a person previously

1 convicted of a felony and felony probation. You
2 don't need to go any further than to look at Exhibits
3 184, 185 and 186 which are the certified copies of
4 judgments and sentences of Mr. Bradley in four
5 separate felony counts where he first was sent to
6 prison and then to be followed by a period of
7 probation. You'll remember the testimony of Charles
8 Colon, the probation officer that Mr. Bradley had
9 back in late 2011, early 2012, that although
10 Mr. Bradley had discontinued reporting and violated
11 his probation and had outstanding warrants for him,
12 he was still on probation even though he was in
13 violation status. Clearly that aggravating
14 circumstance has been proven beyond any reasonable
15 doubt in this case.

16 The third aggravating circumstance is that the
17 defendant was previously convicted of a felony
18 involving the use or threat of violence to the
19 person. You remember the testimony of Officer Colon
20 again that one of the cases that Mr. Bradley was on
21 probation for was a robbery case. You'll recall the
22 testimony of Gary Shrewsbury, the victim in that
23 robbery case, who appeared here and testified to you
24 about what happened, how Mr. Bradley had held a gun
25 to his forehead, had actually tapped him in the

1 forehead with the barrel of the gun and threatened to
2 kill him during the course of that robbery that took
3 place, or at least that he was sentenced for back in
4 March of 2009. Clearly -- and I believe the Court is
5 going to instruct you robbery is crime of violence.
6 Coupled with the testimony from Mr. Shrewsbury about
7 the use of the firearm during the course of that
8 robbery, threat to kill him, the tapping him on the
9 forehead with the firearm, that clearly establishes a
10 crime of violence and I submit to you that the third
11 aggravating circumstance has been proven beyond any
12 reasonable doubt.

13 A fourth aggravating circumstance is that the
14 capital felony was committed while the defendant was
15 engaged in the commission of or flight after
16 committing a robbery. In this particular one we're
17 talking about the robbery that you all have found
18 beyond a reasonable doubt that occurred at the
19 EconoLodge shortly before Deputy Pill was killed.

20 Clearly Mr. Bradley was in the process of
21 fleeing from the EconoLodge at the time of the murder
22 of Deputy Pill. All the testimony that the stop
23 where deputy Pill was killed was only three and a
24 half miles away from the EconoLodge, it was just a
25 short jog down 192 and then a left hand turn down

1 John Rodes Boulevard to get to that location and then
2 it took ten to fifteen minutes after the robbery
3 where the shooting took place.

4 You'll recall Miss Kerchner's testimony that
5 they had stopped no place in between, it was a direct
6 shot for them. They left the hotel after the robbery
7 trying to get away so that the -- they knew that the
8 police were coming, they took off in the vehicle and
9 then were stopped -- first spotted by and then
10 stopped by Deputy Pill at which time the defendant
11 shot her dead. Clearly they were in the flight after
12 committing a robbery. So, that aggravating
13 circumstance has been proven beyond a reasonable
14 doubt.

15 The fifth aggravating circumstance is that the
16 capital felony was committed for the purpose of
17 avoiding or preventing a lawful arrest or effecting
18 an escape from custody. You'll recall the testimony
19 from Miss Kerchner, Mr. Dieguez, even Amanda Ozburn,
20 the defendant knew he had outstanding warrants for
21 his arrest and he was not going back to jail. Not
22 going back to jail. He knew he had just been
23 involved in the taking of property at a minimum from
24 the hotel, possibly the robbery because he knew that
25 he had used the threat of force of running the

1 maintenance man over if he didn't move out from in
2 front of the vehicle. He knew that he was in trouble
3 for that, he knew he was in trouble for violating the
4 terms of his probation and he did not want to go back
5 to prison. Clearly he shot and killed Deputy Pill
6 for that reason.

7 Now, the Judge is going to tell you and I
8 mentioned earlier that is there is a doubling effect
9 between that particular one where the capital felony
10 was committed for the purpose of avoiding or
11 preventing a lawful arrest or effecting an escape
12 from custody along with the aggravating circumstance
13 that the victim of the capital felony was a law
14 enforcement officer engaged in the performance of her
15 official duties. Obviously she was the person who
16 was trying to apprehend Mr. Bradley who was about to
17 discover that he had the outstanding warrants and
18 would have taken him back to prison and she was shot
19 because she was in that position.

20 The Court will advise you that although those
21 two, if you believe that each of those has been
22 proven beyond a reasonable doubt, they have a
23 doubling effect so you should consider the two of
24 those as one aggravating circumstance together.

25 Finally, the six aggravating circumstance that

1 the State alleges in this case is that capital felony
2 was a homicide and was committed in a cold,
3 calculated, and premeditated manner without any
4 pretense of moral or legal justification.

5 The Judge is going to you some instructions on
6 what that particular aggravating circumstance means
7 and the terms of it mean and I believe she's going to
8 tell you that cold means the murder was the product
9 of calm and cool reflection.

10 Calculated means that -- means having a careful
11 plan or prearranged design to commit murder. A
12 killing is premeditated if it occurs after the
13 defendant consciously decides to kill. The decision
14 must be present in the mind at the time of the
15 killing. The law does not fix the exact period of
16 time that must pass between the formation of the
17 premeditated intent to kill and the killing. The
18 period of time must be long enough to allow
19 reflection by the defendant, the premeditated intent
20 to kill must be formed before the killing. However,
21 in order for this aggravating circumstance to apply,
22 a heightened level of premeditation demonstrated by a
23 substantial period of reflection is required.

24 A pretense moral or legal justification is any
25 claim of justification or excuse that though

1 insufficient to reduce the degree of murder
2 nonetheless rebuts the otherwise cold, calculated, or
3 premeditated nature of the murder.

4 Was this a cold, calculated, premeditated
5 killing? Let's look at the evidence. We know that
6 Mr. Bradley was aware that he had warrants
7 outstanding for his arrest, the police were looking
8 for him since February of 2011. We know that he had
9 made the decision that he was not going back to
10 prison.

11 Miss Ellison, the girlfriend that he had from I
12 think May of 2010 up through sometime in 2011, told
13 you that she was aware when she first meet him
14 released from prison and was on probation and at that
15 point he still was reporting to probation when they
16 first met but there came a time when he stopped
17 reporting to probation and warrants were issued for
18 his arrest and she urged him to turn himself in but
19 he refused. Mr. Bradley made the conscious decision
20 I am not going back to prison, not going, no matter
21 what I have to do, I am not going back to prison.
22 How long did he have to think about that and what did
23 he do to prepare himself so that he wouldn't be taken
24 back to prison. He armed himself with a gun.

25 You heard the testimony of Robert Marks,

1 November of 2011 he stole the gun from his
2 brother-in-law and sold it to Mr. Bradley. November
3 of 2011, four months before the murder of Deputy Pill
4 this defendant has armed himself and is making the
5 conscious decision that he is willing to kill rather
6 than going back to prison.

7 But it's not just those witnesses. Amanda
8 Ozburn in December of 2011 when she's with him sees
9 how spooked he gets when they see a bunch of police
10 cars while they're driving around one day and he says
11 I don't want to go back to jail. I'm not going back
12 to prison.

13 MR. MOORE: Your Honor, may we approach?

14 THE COURT: Yes, you may.

15 (Thereupon, a benchside conference was had out
16 of the hearing of the jury as follows:)

17 MR. MOORE: Your Honor, the State is now
18 referring to her prior what was introduced as
19 consistent statement or inconsistent, I'm not sure
20 which it was but, which can only be used for -- as to
21 the credibility of Miss Ozburn. It cannot be used as
22 something in evidence which is the purpose for which
23 Mr. McMaster is using it. So, that's -- that goes in
24 violation with the Court's instruction, the limiting
25 instruction which says that that evidence can only be

1 offered as it relates to the credibility of the
2 witness and not be used as substantive evidence which
3 is now what it's being offered for.

4 THE COURT: Response from the State.

5 MR. MCMASTER: Your Honor, the statement that
6 Miss Ozburn made and her sworn statement to law
7 enforcement officers that we impeached her with
8 during the trial, I believe she testified he stated
9 he did not want to go back to prison.

10 MR. MOORE: She denied that on cross examine --
11 she denied that on direct, she had no memory of that
12 statement and the State when she was confronted with
13 it said that, you know, if I said that I was wrong
14 and so -- and that's the objection in the limiting
15 instruction.

16 MR. BROWN: She said that he said he was aware
17 of the warrants, he's going to run but she denied
18 that he said he'd hold trial in the streets and he
19 would go down like a solider. That's what she
20 denied. She acknowledged that he knew about the
21 warrants and said he wouldn't go back and he would
22 run.

23 MR. MOORE: What they're limited to is saying
24 that he knew about the warrants and he could run.
25 They can say that and -- but the rest it -- was

1 limited by the Court's instructions because it cannot
2 be offered for substantive evidence.

3 THE COURT: I understood that she said that
4 they can only use to impeach her credibility was that
5 he would hold court in the streets.

6 MR. MCMASTER: And would go down like a
7 solider. I'm not making any reference to that.

8 THE COURT: So, the fact that he knew there was
9 a warrant and he would run. Unless I heard
10 Mr. McMaster say something else, that's all I heard
11 him say so far.

12 MR. LANNING: Well, he said that she said that
13 Bradley said he wasn't going back to prison. The
14 testimony was I'll run.

15 MR. MOORE: So, we need to stick with what the
16 State can use and not what they were prohibited and
17 limited from using by the Court's instruction.

18 THE COURT: Okay. To be honest with you, I
19 can't be that specific as to what her testimony was,
20 whether it was I'm not going back to prison or I'll
21 run.

22 MR. PIROLO: Judge, it was my witness and I
23 distinctly remember her saying he would run. I
24 cleared that up on cross.

25 THE COURT: So, keep that as to I'll run. He

1 knew he had warrants and he'd run. Okay. Thank you.

2 (Thereupon, the benchside conference was
3 concluded and the proceedings were had as follows:)

4 MR. MCMASTER: Folks, one thing I should point
5 out is that your recollection of what the testimony
6 is in the case is what counts in the case, not what I
7 tell you I believe that I heard during the course of
8 the trial or what my notes might reflect, it's what
9 your joint recollection is. We as attorneys hear a
10 lot of different things, see a lot of different
11 things that you all might not necessarily hear or
12 see, sometimes we get those mixed up when we talk to
13 you. In this particular case you all will make the
14 factual decision about what it was that Miss Ozburn
15 said occurred back in December of 2011, but certainly
16 she talked about how Mr. Bradley was spooked when he
17 saw the police cars, when he saw police vehicles, and
18 that he said he would run at a minimum if he were
19 apprehended or he was stopped by the police.

20 But what else do we have to show the cold and
21 calculated and premeditated, heightened premeditated
22 situation in this case. We have the events of March
23 6th of 2012. We have the fact that Mr. Bradley
24 started thinking about what was going to happen to
25 him if he got pulled over at least as early as when

1 he drove away from the hotel. As I discussed with
2 you in closing arguments in the guilt phase, at that
3 point he knew that the hotel folks had called 911, he
4 knew the police were on the way, he knew that they
5 had his tag number, the description of his vehicle
6 and he had to be thinking from that point forward
7 what am I going to do to keep me from going back to
8 prison. And he had to really kick it into high gear
9 when he saw Deputy Pill's patrol vehicle coming at
10 him as he was going northbound on John Rodes
11 Boulevard there by the Lamplighter Village place. As
12 he saw a marked patrol car coming at him, look him in
13 the face as they pass by each other going in opposite
14 directions and then immediately make a u-turn.
15 That's not something that we all are not unfamiliar
16 with, seeing a police car do a u-turn right behind
17 you. It's always usually bad news for me but in this
18 particular case you can't help but believe that
19 Mr. Bradley really, really went into overdrive in
20 thinking about what he's going to do at that point.

21 And what do we have from that point forward?
22 We have a period of time where Deputy Pill drives to
23 catch up to Mr. Bradley's vehicle and finally does
24 there by Eau Gallie. We have the period of time that
25 she turns the lights on, the overhead light and

1 chirps her siren to get his attention to pull him
2 over. We have the full three minutes and fifty-two
3 seconds from the time that camera went on until the
4 bullets started coming out the barrel of his gun of
5 Mr. Bradley thinking about what he's going to do to
6 go back -- to prevent going back to prison. And we
7 know what his decision was because we saw it on
8 camera. We saw it eight times. We heard it eight
9 times. He decided to shoot Deputy Barbara Pill to
10 death for no other reason than that he did not want
11 to go back to prison. I submit to you that the cold,
12 calculated, and premeditated nature of this crime
13 screams to you that this has been proven beyond a
14 reasonable doubt.

15 If you find each of those aggravating
16 circumstances has been proven beyond a reasonable
17 doubt, then you have five separate aggravating
18 circumstances that you can consider has established
19 that this is a proper death penalty case. And if you
20 do that weighing process at this stage just looking
21 at the aggravators alone, I submit to you that your
22 decision should be that those five aggravating
23 circumstances would justify the imposition of a death
24 penalty and therefore you go to the next step. You
25 now look at the mitigators and determine by the

1 greater weight of evidence whether the mitigators
2 that are alleged have been proven. And let's look at
3 what some of the mitigators are that have been
4 claimed in this case.

5 First their claim that the capital felony was
6 committed while the defendant was under the influence
7 of extreme mental or emotional disturbance. Well, we
8 have a conflict in the evidence on that point between
9 Dr. Olander who was called by the Defense and
10 Dr. Patricia Zapf who was called by the State.
11 Dr. Olander has given her opinion that, yes, the
12 defendant was under the influence of extreme mental
13 or emotional disturbance. Dr. Zapf says I examined
14 him, I looked at the same stuff Dr. Olander did, I
15 don't find that.

16 He scored well on all of the tests, not the top
17 of the tree but. He had a C plus or B minus average
18 in school. He graduated from high school. He was
19 functioning well in society. I mean, he was out
20 there. He wasn't receiving any professional help,
21 had made no professional -- made no claims that he
22 needed any type of professional help or mental health
23 help. He was functioning within society's norms at
24 least up to the time of March 6th of 2012 when he was
25 taken into custody.

1 Another mitigator alleged is that the capacity
2 of the defendant to appreciate the criminality of his
3 conduct or to conform his conduct to the requirements
4 of the law was substantially impaired. Once again,
5 we have the dispute in the testimony between Dr. Zapf
6 and Dr. Olander on that point. One saying yes, one
7 saying no. You all have to make up your own minds on
8 this one.

9 You have expert testimony on both sides of the
10 aisle on that situation. You've heard testimony
11 about the lack of any records indicating that
12 Mr. Bradley was having or suffering any type of
13 mental illnesses prior to the shooting of Deputy Pill
14 and you'll have to make that decision.

15 Another mitigator alleged is that the age of
16 defendant was twenty-two at the time of the crime.
17 That's not really in dispute, the age of Mr. Bradley,
18 but I submit to you age twenty-two is not exactly a
19 mitigating factor in this situation. It's not an
20 underdeveloped teenager who is going through a crisis
21 of trying to fit in. This is a full grown adult
22 male, graduate from high school who had made his own
23 life out on the streets. He chose parts of the life
24 that he lived. Not all of it, I think you all heard
25 the testimony of the brothers, others, there are

1 certainly things that have affected Mr. Bradley that
2 were beyond his control, but certainly many of the
3 things that have affected him were by his choosing.

4 Another mitigator or alleged mitigator that the
5 defendant was severely physically abused as a child.
6 That he was verbally and emotionally abused as a
7 child. That his mother chose his stepfather over her
8 own children and failed to protect him from their
9 stepfather's abusive treatment. That the defendant
10 witnessed the physical verbal and emotional abuse of
11 his siblings by his stepfather. The defendant
12 witnessed the physical, verbal and emotional abuse of
13 he mother by his stepfather. As a child the
14 defendant had no loving father figure or male role
15 model. That the defendant had a close loving
16 relationship with his brother Anthony. That the
17 defendant is known by his family and friends to be
18 generous and contributed financially to the support
19 of his mother and friends. I submit to you those
20 things aren't really in factual dispute, I take for
21 granted that they are established for the record in
22 this case.

23 There's no contrary testimony by anybody that
24 the disputes that Mr. Bradley was abused by his
25 stepfather as well as the two brothers were also

1 abused, the two that testified about what happened,
2 but does that justify the killing of a law
3 enforcement officer.

4 Certainly the two brothers who came in and
5 testified about what had occurred as a child during
6 their childhood as well as Mr. Bradley's childhood
7 walked through the front door of the courthouse,
8 walked through the front doors of the courtroom to
9 come in and testify. They weren't brought here like
10 Miss Kerchner or Mr. Marks in chains with shackles on
11 their feet, prison uniforms. How is it that the two
12 brothers apparently functioning quite well and they
13 haven't been charged with killing a police officer if
14 they suffered the same abuse as Mr. Bradley did.

15 One of the mitigators alleged is that defendant
16 was addicted to and abused drugs from an early age.
17 I know that there was a lot of talk when you all were
18 selected as jurors as to whether or not you will
19 consider drug abuse or drug addiction as a mitigator
20 or an aggravator in this case and I believe that all
21 parties stressed to you that it is not an aggravating
22 circumstances. It can't be considered as an
23 aggravating circumstance in this case, but I suggest
24 to you it's not exactly a mitigator either. The fact
25 that Mr. Bradley abused drugs, whether he abused them

1 from the age of twelve on up or just started more
2 severely abusing drugs in the few weeks immediately
3 prior to March 6th of 2012, either way, those were
4 voluntary decisions by Mr. Bradley to engage in that
5 behavior.

6 This is not a situation where he was severely
7 injured somewhere and was prescribed medications by a
8 physician to treat the illness and somehow became
9 addicted to them and began to abuse them after that
10 fact. This is a person who made a conscious decision
11 to take drugs, to take illegal drugs, and he made
12 that decision every single day that he was using
13 those drugs. He made that decision on March 6th of
14 2012.

15 You're going to hear that one of the alleged
16 mitigators is that the defendant suffers from brain
17 damage and brain functional deficits. Well, you
18 certainly heard the testimony from Dr. Wu you about
19 the PET scans and the MRI DTI scans that were done
20 that show brain damage in Mr. Bradley's brain and
21 Dr. Wu went to great lengths to establish that, well,
22 that had to come from one of those three instances of
23 head trauma that Mr. Bradley suffered, the fall off
24 of the monkey bars where he landed on the head and
25 became unconscious at school, the motor vehicle

1 accident in 2008 where he claimed he hit the
2 windshield and lost consciousness, or the time that
3 he was in prison and he got hit in the head when
4 another inmate threw a lock at him and hit him in the
5 head. So, if those are the three choices and any one
6 or a combination of those three are what caused the
7 images that were shown on the PET scan and MRI scan
8 to show abnormalities, well, then they obviously had
9 to have occurred prior to March 6th, 2012, so on
10 March 6th he had those brain problems and they could
11 have affected the way he was thinking. Not did
12 affect but could have affected. And the reason he
13 says that is because he acknowledged that there are
14 people who show brain abnormalities on those scans
15 but have absolutely no symptoms related to them.
16 Their functioning is just fine, they are not affected
17 by what shows to be brain damage on the scans that
18 are done, the MRIs.

19 But even more telling was on our cross
20 examination of Dr. Wu you what about that other motor
21 vehicle accident that the defendant was in. What
22 about the one that took place after the shooting of
23 Deputy Pill, couldn't that have caused the brain
24 damage that you're seeing on these scans. Why isn't
25 that responsible for it. And if that is the motor

1 vehicle accident that actually caused the brain
2 damage that you're seeing even if there is an impact
3 it didn't happen until after the shooting.

4 And why should we believe that the motor
5 vehicle accident of March 6th of 2012, the one that
6 you all saw in the videos, the one that you saw from
7 the helicopter videos, you watched the vehicle going
8 into the ditch, the one you saw from Officer Cooper's
9 in-car camera as he followed the SUV as it was trying
10 to escape down John Rodes Boulevard and on to parkway
11 Drive, why should we not believe that it's that
12 accident and why should we believe that it's the
13 one -- the three instances that happened earlier.

14 First, the very first time that these doctors
15 discovered that there was the brain trauma or the
16 brain injury or abnormalities was in late 2013, a
17 year and three quarters or so, year and a half after
18 the shooting of Deputy Pill when they did the scans,
19 and what had occurred prior to that time to document
20 that there was any head injury whatsoever to
21 Mr. Bradley. Mr. Bradley first related these three
22 possible head injuries to his -- to Dr. Olander in
23 her interviews of him which began in March of 2013.

24 And what records were we shown to establish
25 that these instances actually even happened. No

1 school records whatsoever indicating anything about a
2 fall from the monkey bars and falling on your head
3 and becoming unconscious and I submit to you that's
4 just not reasonable. Like I argued to you in closing
5 arguments in the guilt phase in this case, it is
6 unreasonable not to have any record whatsoever on
7 school property and school grounds at school falling
8 from the monkey bars and becoming unconscious. You
9 don't have that happen at school and just get up and
10 walk away from it as if nothing ever, ever happened.
11 That's going to be documented.

12 What about the while he's in the Department of
13 Corrections and he's hit in the head with a lock.
14 They want you to believe that he's hit so seriously
15 that it's caused organic brain damage to him and yet
16 no documentation. You've seen the records -- you
17 haven't seen the records themselves, you've heard the
18 experts testify about the jail records that they have
19 reviewed and no such incident is ever mentioned in
20 those records.

21 What is mentioned is the motor vehicle accident
22 of 2008, the one where Mr. Bradley when he tells his
23 doctor about it claims he was going sixty miles an
24 hour as a passenger in a car, that he was t-boned, he
25 was knocked unconscious, he had to go to the

1 hospital, he's got all sorts of severe problems from
2 that. What did the actual hospital records show?
3 They show that he appeared at the hospital two days
4 after the accident having declined medical treatment
5 during the accident itself and that he appeared two
6 days later complaining about I believe a neck injury
7 and a knee injury, was diagnosed with whiplash and
8 given some medications and sent home. That's what
9 the records show. Certainly don't show any major
10 head trauma, anything that would justify organic
11 brain damage to be diagnosed two years later.
12 Actually now we're talking about a 2008 motor vehicle
13 accident, a 2013 test, so we're talking five years or
14 so later for the first time that it's showing up and
15 you relate it back to that.

16 I submit to you that the more reasonable thing
17 to believe is that in fact this brain deficit or
18 brain damage and injury occurred during the motor
19 vehicle accident of March 6th of 2012 after Deputy
20 Pill was shot. There we know what happened because
21 you saw it on video. We know that Mr. Bradley was
22 not restrained by seatbelts in that accident. We
23 know he was lying on the floor looking out at the
24 police afterwards. We know from the DOC records that
25 shortly -- not the DOC, the Polk County facility over

1 in Seminole County where he was taken and held in
2 jail that he complained two days after the accident
3 of having a fractured hand. They x-rayed it and in
4 fact he had a fractured hand from the accident. I
5 submit to you if there is brain damage, number one,
6 it has had no real impact on Mr. Bradley, or if it
7 did all of that impact arose after the shooting of
8 Deputy Pill when he was running from the law in that
9 March 6th, 2012, car chase and subsequent crash.

10 Another mitigator is that in October of 2011
11 Travontey Williams, the defendant's cousin, was shot
12 to death which had a emotional and psychological
13 impact on the defendant. All right. Defendant's
14 have relatives die in some sudden unexpected ways,
15 certainly that impacts everybody, but does it justify
16 the killing of a uniformed police officer? I suggest
17 it does not.

18 Another mitigator is the defendant had a two
19 year relationship with Carrie Ellison during which
20 she became pregnant with his child. She testified
21 about that and about the miscarriage that occurred a
22 few days after the death of Mr. Williams, the cousin,
23 and that thereafter the defendant began a period of
24 significantly greater drug abuse. Once again, choice
25 by Mr. Bradley to voluntarily take drugs, take

1 illegal drugs. That may have been his method of
2 escaping or dealing or coping or whatever, but once
3 again this is a voluntary decision by Mr. Bradley.

4 You're going to hear an alleged mitigator that
5 following loss of his cousin he became paranoid and
6 believed a hit was placed on his life and obtained a
7 gun to protect himself. There is testimony that
8 those were some of the motives of Mr. Bradley, but I
9 submit to you that they also establish the paranoia
10 of not wanting to go back to jail and knowing that
11 law enforcement officers are looking for him. That
12 goes hand-in-hand and I submit to you the obtaining a
13 gun wasn't just because he was concerned about a hit
14 but rather he was concerned about not wanting to go
15 back to prison and needing to do something to take
16 steps to prepare himself for the day he may be
17 confronted by law enforcement who would try to force
18 him to go back to prison.

19 Another mitigator is that several of the
20 defendant's friends and relatives were murdered or
21 died which appeared to emotionally affect the
22 defendant. People die, it is a fact of life that one
23 of us or all of us at one point in the course of time
24 is going to be confronted with. We are all going to
25 die, all of your relatives are going to die, it's

1 going to happen, but it does not justify the killing
2 of another human being.

3 The defendant has been diagnosed with poly
4 substance dependence which is in remission in a
5 controlled environment, that is he's in jail and
6 can't get the drugs so sort of in remission for that
7 particular problem.

8 And has passive and dependent personality
9 traits. May very well be that he's got these
10 problems, but once again the dependence problems, the
11 poly substance abuse dependence is of his own making.

12 The defendant has a full scale IQ of 70 as
13 assessed in 2013 by the WAIS IV that was administered
14 by Dr. Olander and her staff, but he was a
15 functioning human up being. We're not talking about
16 someone who had to have full care on a daily basis to
17 take him places, to tell him what to do and to hold
18 his hand, this was man who functioned on his own.
19 Was out on the streets living the life that he wanted
20 had to live, chose the life that he wanted to life
21 and was living.

22 The defendant was cooperative with law
23 enforcement and confessed. I agree, he cooperated.
24 You saw on the videotape, he was read his rights, he
25 said he understood them, he was willing to talk and

1 explained to the officers how he shot and killed
2 Deputy Pill.

3 Finally, the existence of any other factors in
4 the defendant's character, background or life, or the
5 circumstances of the offense that would mitigate
6 against the imposition of the death penalty. That
7 basically is anything else about the defendant or the
8 circumstances of this case that you think would
9 mitigate against the death penalty.

10 I submit that, like we discussed just now, a
11 number of these mitigators do in fact exist, but the
12 fact that they exist does not mean that you should
13 give them great weight. Does not mean that they
14 would outweigh the aggravating circumstances that
15 have been proven in this case beyond any reasonable
16 doubt.

17 I submit that if you follow the process that
18 Mr. Brown outlined in the jury selection and weigh
19 the mitigators against the aggravators, all of those
20 different potential mitigating circumstances, if you
21 believe them, if you believe that they occurred,
22 weigh them against the aggravating factors that exist
23 in this case.

24 And you all get to decide how to do that
25 weighing process. The Court isn't going to give you

1 any real help in her instructions about how you make
2 that weighing decision, you all get to come up with
3 that, each and every one of you, on your own in
4 making the decision about weighing those
5 circumstances. I submit to you though if you use
6 your common sense, and that's one of things the Judge
7 is going to tell you, that just because you're on
8 this jury and there are a number of technical things
9 that we go through, you don't have to leave your
10 common sense behind, and I submit to you that if you
11 consider the evidence that has been presented in this
12 case, particularly as it relates to the aggravating
13 factors and these mitigating factors, you will decide
14 that the aggravating factors in this case far
15 outweigh the mitigating factors that the Defense is
16 going to argue.

17 So, that brings us back to the question why is
18 the death penalty the appropriate sentence in this
19 case. This is not the defendant's first rodeo. This
20 defendant has had numerous, numerous chances. He's
21 on probation for four separate felony counts, one of
22 which was a prior robbery, a violent crime. Not only
23 is it violent in nature just by the nature of the
24 crime of robbery but you heard how he had a gun, was
25 willing to put it to the forehead of the victim that

1 was robbed in that situation, Mr. Shrewsbury, and
2 even threatened to kill Mr. Shrewsbury. He was given
3 a chance even with that case.

4 Originally had been on probation if you recall
5 Officer Colon's testimony on one of the cases and
6 then violated his probation with robbery in another
7 case, was sent to prison for two years to be followed
8 by another chance at probation. Another chance where
9 he is told, yes, you have done things wrong in your
10 past but this is now your opportunity to change your
11 life, to turn yourself around, to start following the
12 law, to start living a law abiding life and what does
13 he do? He quits going to the probation. He runs
14 away from the probation. I got my own life to live.
15 And when he's told by his girlfriend, Miss Ellison,
16 turn yourself in, get this straightened out, no, I'm
17 not ready, maybe some other time but I'm not ready,
18 I'm not going back to jail.

19 And what happens next? He commits another
20 robbery. While he's on probation on the first one
21 and three other felony counts he goes out and he
22 commits another robbery, one you found him guilty of
23 at the EconoLodge. And what does he do after that?
24 He kills Deputy Pill. Trying to escape from the new
25 robbery, trying to escape from going back to jail on

1 the probation cases, he guns down a uniformed deputy
2 with the Brevard County Sheriff's Office who never
3 threatened him, who's only crime was to tell him
4 twenty-three times to get out of the car,
5 twenty-three times.

6 Listen to the video. Deputy Pill, get out of
7 the car, I need to talk to you. She's investigating
8 what she thinks is just a theft of property from a
9 hotel, she doesn't know that it's actually of a
10 robbery because of what was done with the maintenance
11 man, she only knows it's a theft of property. She's
12 talking to what appears to be a fairly young man
13 asking him to get out of the car so she can talk to
14 him and clear up the situation, find out what
15 happened. And what does she get for trying to talk
16 to Mr. Bradley? She gets shot in the head. She gets
17 shot in the arm. She got shot in the back.

18 The victim, Barbara Pill, was a law enforcement
19 officer. During jury selection you heard the Judge
20 ask questions of each of the jurors do you know any
21 law enforcement officers, do you have any law
22 enforcement officers in the family, do you have any
23 good friends, anybody that's in law enforcement or
24 has been in law enforcement, you can't consider a law
25 enforcement officer's testimony or give it greater

1 weight than you would any other witness, they're just
2 like any other person. For the purposes of
3 determining their credibility on the stand all of
4 that is exactly accurate. For determining whether
5 this is a death penalty case, the Florida legislature
6 says, yes, that is important. Yes, it's important, a
7 law enforcement officer is the victim, in the
8 performance of their official duties, that is the
9 very first aggravating circumstance that I've
10 discussed with you.

11 Florida legislature has decided that as a
12 policy decision we protect those who try to protect
13 us. Deputy Pill was in her marked vehicle, wearing
14 her uniform, carrying out her duties that day and she
15 was shot to death. That alone cries out for the
16 death penalty. That alone -- even putting aside the
17 other five aggravating circumstances, that alone
18 justifies the death penalty.

19 When you go back to the jury room, I urge you
20 to talk to your fellow jurors, express your opinions,
21 discuss the weighing factors of mitigating versus
22 aggravating. I submit to you that if do you, you
23 will come to the same conclusion that justice calls
24 for, that the Pill family calls for, that the Brevard
25 County Sheriff's Office family calls for, the law

1 enforcement to the family calls for.

2 MR. MOORE: Objection. May we approach?

3 THE COURT: Yes, you may.

4 (Thereupon, a benchside conference was had out
5 of the hearing of the jury as follows:)

6 MR. MOORE: That is an entirely inappropriate
7 argument suggesting that the family, the law
8 enforcement community, the community at large wants
9 the death penalty. That's not permitted. We can't
10 comment, we can't present evidence on what the family
11 for the defendant wants, the State can't present
12 evidence on what all these various agencies want.

13 And what Mr. McMaster said earlier was there's
14 a lot of things that we hear that we get mixed up, we
15 hear things and if we say something, you know, which
16 would be something we've heard, you know, you've got
17 to sort out what it is we heard in the courtroom, but
18 that was not presented in the courtroom for a reason
19 what these people want. That is entirely improper
20 argument and should not be considered by this jury.
21 I move for a mistrial. A curative instruction isn't
22 going to fix it.

23 THE COURT: I'm concerned about what the family
24 of the sheriff's office wants, that's the one I'm
25 concerned about. Not the Pill family, the family of

1 the law enforcement officers.

2 MR. MOORE: Also there's a message to the
3 community argument in there which is also prohibited
4 because it's extremely improper and prejudicial, but
5 to introduce any suggestion that the death penalty
6 should be given because that's what the law
7 enforcement community wants, it's a send a message to
8 the community is a vote for a death penalty for
9 reasons that this jury has no business considering.
10 There is no way to undo what has been suggested to
11 this jury by that comment, a comment that an
12 instruction from this Court will highlight it, it
13 would compound it, it cannot be fixed.

14 THE COURT: Okay. Response from the Defense.
15 I mean from the State.

16 MR. MCMASTER: Judge, the Defense all the way
17 through this case has been alleging that law
18 enforcement in particular has been chafe in their
19 investigations, has been fashioning their testimony
20 such as to obtain a conviction in this case and what
21 I said is entirely consistent with what their
22 position has been all the way through.

23 MR. MOORE: What his position is is that the
24 sentence, what it has to do with is the sentencing
25 phase, what the sentence should be based upon a

1 source which this jury cannot consider evidence of,
2 cannot consider any inference of and has now been
3 brought to their attention that that's what law
4 enforcement, that's the vote of law enforcement is a
5 vote for death penalty.

6 THE COURT: I'm going to sustain the objection
7 as to law enforcement. What is it that the -- I'm
8 going to deny the request for a mistrial. Mr. Moore,
9 what is it that you're requesting that I do?

10 MR. MOORE: I'd ask that the Court instruct the
11 jury to disregard all of the comments made with
12 respect to law enforcement, with respect to the Pill
13 family with respect to the sentence. Can you think
14 of anything else?

15 THE COURT: With regard to the Pill family.

16 MR. MOORE: You know --

17 MR. LANNING: Judge, they're not allowed -- I
18 mean, they're not allowed to come in and say we want
19 the death penalty but Mr. McMaster just did it for
20 them.

21 MR. MOORE: That's the problem. I mean,
22 there's no way to fashion an instruction on this
23 which will obviate the damage of what the family
24 wants, what the law enforcement community wants.
25 There's no way to undo do that. I mean --

1 THE COURT: I've already denied the request for
2 a mistrial. So, tell me what you want as opposed to
3 keep arguing that point.

4 MR. MOORE: To disregard the comments of the
5 Mr. McMaster as it relates to the sentence and in
6 particular as it relates to law enforcement and the
7 victim's family.

8 MR. PIROLO: Not to be considered in the
9 weighing process whatsoever.

10 MR. MOORE: Not to be considered at all. Not
11 to be considered. Cannot be considered by you. The
12 wishes the family and law enforcement community which
13 were referenced by Mr. McMaster cannot be considered
14 by the jury and must be disregarded.

15 THE COURT: Response from the State. Anything
16 else from the State?

17 MR. MCMASTER: No.

18 THE COURT: Okay.

19 MR. LANNING: Judge, could you say it so I
20 could hear it back to see whether we really want
21 this?

22 THE COURT: Okay. Ladies and gentlemen of the
23 jury, you are to disregard any comments as it relates
24 to what the law enforcement community wants and the
25 wishes of the family with regard to sentencing.

1 MR. MOORE: Comments made by the prosecutor, by
2 Mr. McMaster to be more specific.

3 THE COURT: I don't want to say Mr. McMaster.

4 MR. MOORE: Okay. Prosecutors.

5 THE COURT: Ladies and gentlemen of the jury,
6 you are to disregard any comments made by the
7 State -- you are to disregard any comments made by
8 the State as it relates to what the law enforcement
9 community wants and the wishes of the family with
10 regard to a sentence. This is not to be considered
11 by you in your deliberations.

12 MR. MOORE: You must -- stronger language. The
13 Court must -- the jury must absolutely disregard and
14 absolutely cannot.

15 THE COURT: I'm not going to say that. I told
16 them to disregard it. I'm going to tell them that
17 you are to disregard.

18 MR. MOORE: Well, I'm asking for it.

19 THE COURT: Descriptive verbs.

20 MR. MOORE: Well, Your Honor, I mean, that is
21 it an --

22 THE COURT: And a rule -- I mean, to disregard
23 is to disregard.

24 MR. MOORE: But, Judge, that is a different
25 category of comment which is absolutely prohibited.

1 It's not just --

2 THE COURT: When you give instructions to the
3 jury, with all due respect, they don't say words like
4 absolute, absolutely. So, I'm not going to have
5 that. I'll be happy to give a curative. You know,
6 curative instruction is a pretty big measure, I don't
7 need to put in absolute.

8 MR. PIROLO: Judge, the law is that they
9 absolutely cannot consider that.

10 THE COURT: You show me a jury instruction that
11 uses the word absolutely, I will put absolutely in
12 there. I'm not aware of any jury instruction that
13 ever uses that word.

14 MR. MOORE: I don't have that case.

15 THE COURT: Okay. Do you want me to give this
16 instruction or not?

17 MR. MOORE: Yes, Your Honor. Yes.

18 THE COURT:

19 (Thereupon, the benchside conference was
20 concluded and the proceedings were had as follows:)

21 THE COURT: Okay. Ladies and gentlemen of the
22 jury, you are to disregard any comments made by the
23 State as it relates to what the law enforcement
24 community wants and the wishes of the family with
25 regard to a sentence. This is not to be considered

1 by you in your deliberations. Okay. Mr. McMaster,
2 you may proceed.

3 MR. MCMASTER: Look to the evidence in this
4 case, ladies and gentlemen. Look to the evidence and
5 if you do I submit that you will conclude that the
6 evidence in this case demands that you recommend the
7 sentencing --

8 MR. LANNING: Objection. May we approach?

9 THE COURT: Yes, you may.

10 (Thereupon, a benchside conference was had out
11 of the hearing of the jury as follows:)

12 MR. LANNING: Judge, the suggestion that the
13 evidence or the facts demand a sentence of death is
14 absolutely inappropriate. It's sorting the jury
15 to -- its like you have to do this. There is --

16 MR. MOORE: Especially coming from the State.
17 I mean, the instruction says this is a jury's
18 prerogative, death is never required.

19 MR. LANNING: We move for a mistrial.

20 MR. MOORE: Move for a mistrial and a jury
21 instruction ain't going to fix this either, Your
22 Honor.

23 MR. BROWN: This is pure argument, Judge,
24 (unintelligible).

25 MR. MOORE: It's contrary to the instructions.

1 It's contrary to the law. It is never required. It
2 is never demanded, that's the problem, and for a
3 State attorney to say --

4 THE COURT: He said the evidence demanded, he
5 didn't say the law.

6 MR. LANNING: That's still not different.

7 MR. MOORE: There's no difference, Your Honor.

8 MR. PIROLO: Regardless if evidence or the law,
9 nothing demands it.

10 THE COURT: That's argument. It's argument.
11 You can use that word too. I understand where you
12 have the concern that the law never says that you
13 have to order the death penalty but this is argument
14 and I don't see where that is beyond what argument
15 means.

16 MR. LANNING: Where would we use you're
17 demanded to sentence to life.

18 THE COURT: He said the evidence demands, you
19 know, that's a form of argument.

20 MR. MOORE: You're demanded to --

21 THE COURT: If he said the law demanded it that
22 would be something different.

23 MR. MOORE: You're demanded to find these
24 mitigating circumstances and that's in front of them,
25 we can't make argument like that. They can't

1 especially as to the sentence.

2 THE COURT: I'm going to overrule the
3 objection.

4 (Thereupon, the benchside conference was
5 concluded and the proceedings were had as follows:)

6 MR. MCMASTER: Look to the evidence. I submit
7 to you that the evidence in this case shows you that
8 the proper verdict, proper recommendation is that the
9 death penalty be imposed on Mr. Bradley. Thank you.

10 THE COURT: Okay. Closing statement by the
11 Defense.

12 MR. MOORE: May it please the Court, Counsel
13 for the State, ladies and gentlemen of the jury. I
14 thank you for the efforts that you have made to this
15 point in time, for your patience and your
16 attentiveness and for the efforts that you're going
17 to be making in reaching this life or death decision.

18 You're being asked to make a God like decision
19 but you don't have with all due respect a God like
20 list. You must think thoroughly, deeply, honestly,
21 with respect, civilly in reaching in ultimate
22 decision which could result in the death of that
23 young man, twenty-four years old now, twenty-two when
24 this happened, barely an adult, whether this man
25 lives or dies, and you must do this with calm,

1 thorough deliberation.

2 Now, as I listened to the State Attorney's
3 argument I felt the anger and the revenge, the
4 feelings of running retribution, I felt it rising.
5 Not exactly the type of atmosphere which we people,
6 we human beings do our best thinking. And so the
7 instructions actually deal with that. They say you
8 cannot reach a verdict or reach a decision or make a
9 jury recommendation because you're angry with anyone
10 or feel sorry for anyone or because of sympathy.
11 While you may be moved, and how can you not be, you
12 can not be moved by those factors, anger, revenge,
13 sympathy in making a selection as to what your
14 recommendation is.

15 I must mention, make reference to the victim
16 impact evidence. There is no question Deputy Pill
17 was a fine person, respected by her colleagues and
18 the law enforcement community, loved by her family,
19 no question about that, and that this was a tragic
20 can unnecessary death, but you cannot consider that
21 as an aggravating circumstance. You cannot, although
22 moved by it, have that move you in any particular
23 direction. You cannot have that information which
24 you have before you about her, about the impact of
25 her death on the family, that cannot be the basis for

1 your decision in any way. Its not an aggravating
2 circumstance. That is the instruction that has read
3 to you and will be read to you. It does not list in
4 mitigation, it is just something that you're made
5 aware of. It's very real but all of the evidence
6 that you are presented is focus had strictly on the
7 aggravating circumstances you will be read and the
8 mitigating circumstances which you will be read.

9 Now, I'm concerned that, for a number of
10 reasons, that at the end of this long trial, and it's
11 been long for all of us, there have been breaks in it
12 and I can assure you that during the breaks the
13 attorneys have been hard at it, that because of my
14 fallibility, my oversight, my fatigue, we're all
15 tired, that I may overlook, I may fail to raise
16 points, I may fail to make arguments that I should
17 make and for that I urge you to -- if you see points
18 that I neglected, if you think of arguments that I
19 could have made, that you be the voice of fairness
20 and reason and justice and make those arguments,
21 raise those points because I can't do them, and if I
22 failed to do it then it reflects on Mr. Bradley in a
23 bad way, in a negative way because his life is at
24 stake. Why would you not do that. You should do
25 that. You must do that.

1 I'm also concerned that now that we have
2 reached this second phase of the trial, the
3 sentencing phase, that means in some degree that you
4 have rejected our arguments and perhaps we have lost
5 some credibility in your eyes. There's another
6 instruction that somewhat deals with that, says you
7 are not to judge the lawyers, the lawyers are not on
8 trial. I don't want to say I don't care what you
9 think about me, but I am concerned that because of
10 the arguments we've made, the positions we've taken
11 that somehow that will lessen your ability to
12 consider what I have to say to you now because what I
13 have to say is my only opportunity to speak on behalf
14 of Mr. Bradley and to tell you why a sentence of life
15 without parole would be an appropriate sentence and
16 to have you listen to that with an open ear and not
17 reject it because you have rejected our arguments in
18 the first part of the trial.

19 We talked during jury deliberations about where
20 you would stop, where you thought you would stop in
21 the deliberation process. Would you stop when you
22 hear that the charge is first degree murder and with
23 that at that point you would be ready to impose or
24 recommend the death sentence. Those who said that is
25 how they felt, they're not here now. Would you stop

1 at the point where you heard that the victim was a
2 law enforcement officer? And if people indicated
3 that that was where they would stop, they're not here
4 either. Would you stop when you saw a video of the
5 shooting? It's a horrible thing, horrible thing to
6 watch, no one should have to. Would you stop there?
7 And those who indicated that they would stop there
8 and that would be it for them. That's all they need
9 to say, that's all they need to hear, they're ready
10 to vote, ready to recommend death. They're not here
11 either.

12 And then we get to the point where we ask you
13 if despite all of that if you heard on top of that
14 aggravating circumstances, now, we didn't get into
15 the details of what they were so it's a bit difficult
16 for you to, you know, give a fully informed response
17 to that, but when we asked you just as a general
18 question if you if you heard aggravating
19 circumstances on top of that, could you do what the
20 law requires you to do and take the next step and be
21 open to consider mitigating circumstances.

22 Now, of all of the two hundred plus people who
23 we interviewed, you are sitting in the jury box, not
24 them because they indicated for one reason or another
25 they couldn't go through that process. Some had

1 scheduling problems, some for various reasons were
2 excused but a number because they couldn't take that
3 next step. You said you could. You said you would.
4 You took an oath to do that and that's not just
5 taking, you know, just saying in passing, you know,
6 like sure, yeah, I can do that but I know how I'm
7 going to vote, that wasn't your response. We take
8 that at face value. And when you take an oath, when
9 you make an oath, that's a promise.

10 You all are sitting here because you're
11 responsible citizens and an oath you recognize to be
12 a promise and I urge you as strongly as I know how to
13 do that to consider the mitigating circumstances, go
14 through that process and not just stop where the
15 State told you to stop when they say that this
16 aggravating circumstance or that or all together
17 alone justify the death penalty because if they don't
18 what they do, if established, is establish that a
19 death penalty is an option. It's a possibility
20 legally but before that point in time it isn't.
21 Merely a finding of guilty of first degree murder
22 does not establish eligibility for death, it requires
23 that additional proof and then once it's made, then
24 that alone doesn't establish a death penalty is
25 appropriate. It establishes eligibility.

1 And it also puts a requirement on you that you
2 consider mitigating circumstances and you engage in
3 this debate, this discussion civilly, civilly because
4 there will be strong feelings and you, you know, you
5 may find yourself angry in your disagreement but
6 don't do that. Don't go there. Just deal with this
7 calmly and civilly and -- but do this, engage in this
8 fact finding, this weighing process and keeping in
9 mind that you are never required to vote for death,
10 life is always, always on the table, it's always an
11 option.

12 Mercy is always an option. That is an option
13 that you have. Even if they present all of the
14 aggravating circumstances in the world and we
15 presented no mitigating circumstances, and you know
16 that's not the case because we've presented lots of
17 mitigating circumstances, even then, if the
18 aggravating circumstances outweigh the mitigating
19 circumstances, you can still exercise mercy and vote
20 for life without parole.

21 It concerns me sometimes when people say, yeah,
22 I can do that, I can engage in that, no problem.
23 Really? I mean, this should be a problem. If it
24 isn't a problem, that's a problem. It should be the
25 hardest if not one of the hardest decisions you've

1 ever had to make. It's got to withstand the test of
2 time. You've got to be able to look back in a year,
3 ten years, fifteen years, twenty years and say that
4 was the right decision because once it's done, once
5 it's carried out it's forever, it cannot be undone.

6 Make no mistake by a finding Mr. Bradley guilty
7 of first degree murder you have sealed his faith. He
8 will die in a Florida prison. And so the sentencing
9 options are death, which you know, you know what that
10 is. Life without parole. What is life without
11 parole? That means he will never live prison alive.

12 And what is life in prison like. Now, you
13 don't leave your common sense and your knowledge of
14 the world outside the door. You come into the
15 courtroom, you bring that with you in trying to
16 figure out what does this mean, what does that mean.
17 Now you've got to make a choice, what is the
18 appropriate sentence. So, why would you not want to
19 give as much thought to what, qualitatively, what it
20 means to serve a sentence of life without parole.
21 You can do that. You must do that because you've got
22 to compare these two in deciding.

23 Life without parole means you live in a
24 bathroom sized cage, you live with people that you
25 don't choose to be with, people who are sentenced,

1 removed from society because they could be, and the
2 people who commit the most violent crimes are put in
3 the most maximum secured prisons, told where to go,
4 when to go, when to go bathroom, where to go to the
5 bathroom, where to eat, when to eat, when to get up.
6 There's no freedom there. None. And their constant
7 companions are people like themselves or worse.
8 There is a pecking order as you could imagine.

9 Now, you know what prisons are like. Not you
10 need to have ever been in one but you heard that the
11 strong prey on the weak. The bright, more
12 intelligent prey on the less intelligent. That those
13 who are able to take from others do so.

14 Look at Mr. Bradley. He's not a big man, he's
15 not especially strong, he's not especially bright.
16 He was tested at seventy, seventy IQ functionally by
17 Dr. Olander Dr. Zapf took no issue with any of the
18 testing that Dr. Olander did. He's brain damaged,
19 he's on medication. He is a small brain damaged man
20 who will be thrown into this sewer with the worst of
21 humanity. That will be his life if he gets a
22 sentence of life without parole. So, this man will
23 either die on death row or, he will die in general
24 population and the decision is the one that you're
25 about to make.

1 In a prison system the guards, the correctional
2 officers are law enforcement officers and when
3 inmates enter prison they undergo this screening
4 process, which was brought to your attention in the
5 records of the jail and the prison that Mr. Bradley
6 has been in, and the inmates are classified according
7 to what they did and watched and observed based upon
8 what they did by the correctional officers and so it
9 will be no secret that Mr. Bradley has killed a
10 police officer.

11 Now, in the prison world where the guards are
12 correctional officers, correctional officers are law
13 enforcement officers, it is their duty to protect,
14 that is their purpose, the inmates from each other
15 and themselves from the inmates, but if it's in a
16 situation where Mr. Bradley who has killed a police
17 officer, if they can choose to come to his aid,
18 protect him or not, what do you think they're going
19 to do.

20 This is -- this is not a criticism of law
21 enforcement officers. This is not a criticism of
22 correctional officers. Correctional officers are
23 professionals. Like lawyers, like doctors, some are
24 better than others, there are good ones and there are
25 bad ones but, number one, they can't watch all the

1 inmates all the time and if it's in a situation where
2 they can come to the aid of an inmate and he happens
3 to have killed a police officer, do you think there
4 may be the temptation there to maybe not protect him.
5 What kind of protection will he get. And he'll need
6 it. He will need to be protected when he's in
7 prison.

8 So, life without parole is justice. Society
9 will be protected from Mr. Bradley if that is your
10 concern. He'll be locked up. He'll be watched as
11 well as they can watch him. He'll be punished. A
12 life in that environment some would say is worse than
13 death and they would be right. It would be a lawful
14 sentence because it is one of the two sentencing
15 options approved by the legislature in this state.
16 And he is held accountable. He was held accountable
17 when you found him guilty of first degree murder.

18 That first part of the trial, the guilt part,
19 that was about blameworthiness. You found him
20 guilty. You found that he was blameworthy. The
21 second part of the trial, the part that we're in now,
22 is death worthiness and that's where a thorough and
23 honest consideration of Mr. Bradley's background and
24 everything that we can bring to you about it comes to
25 play.

1 So, where did it begin for Mr. Bradley. In
2 that process of examining how he started out as this
3 baby, became this little boy who became this man.
4 How does that happen? How did that happen for
5 Mr. Bradley. We are the products of our
6 environments. It's a combination of factors that
7 determines how we get to be the persons that we are,
8 partly genetic. It's in our genes in some respect in
9 the effects of our environment on our genetic make up
10 and those two factors operate to determine who we
11 are.

12 Martin Luther King said don't judge a man by
13 where he is now but judge him by the depths from
14 which he came and that's what we have attempted to
15 show you, the depths from which Mr. Bradley came.
16 And I'm not talking about a loving, nurturing
17 upbringing that in his family, I'm talking about --
18 and this point was fairly effectively made when
19 Mr. McMaster was talking to Dr. Wu you about, Dr.
20 Wu's colleague, Dr. James Fallon who is a fellow
21 neuroscientist who also works at the University of
22 California Irvine involved in the same type of
23 research as Dr. Wu which examines the human brain and
24 correlates that with behavior and uses PET scan to do
25 it and as Dr. Wu you testified, and being familiar

1 with Dr. Fallon and his work and his research, that,
2 yes, Dr. Fallon does have an abnormal brain scan of
3 the frontal part of his brain like Mr. Bradley.
4 Mr. Bradley has an abnormal orbital frontal cortex
5 which is a part of the brain which regulates
6 behavior. It's the stop start mechanism as Dr. Wu
7 testified. It's also the part of the brain that when
8 impaired is associated with drug abuse and drug
9 addiction and we see that in Mr. Bradley's life as
10 well. But when there is a dysfunction, when there is
11 a deficit in that frontal part of the brain and
12 according to Dr. Wu who examined the PET scan of
13 Mr. Bradley's brain, there's a significant
14 dysfunction there, a significant impairment. There
15 is not only a likelihood but a probability that that
16 person, Mr. Bradley, will have difficulty modulating
17 his behavior, controlling his behavior, and not
18 because he has chosen, he has chosen to be bad or to
19 break the law but because he is unable to modulate,
20 control his behavior like somebody who doesn't have
21 that brain damage.

22 And Dr. Fallon as testified by Dr. Wu made the
23 contrast between the life he had coming up in a
24 loving, nurturing, warm family environment where he
25 and his two brothers were raised in that environment

1 and he turned into the man that he did and he said it
2 had -- had he had a vastly different upbringing that
3 the outcome would have been vastly different. We
4 have the same type of brain scan dysfunction in the
5 front part of Mr. Bradley's brain as in the front
6 part of Dr. Fallon's, Dr. Fallon's brain, we have the
7 vastly different upbringings. Mr. Bradley didn't
8 choose his upbringing and I think if most people had
9 a choice they would chose a happy, nurturing
10 upbringing, healthy upbringing that Dr. Fallon had.

11 Dr. Wu went on to point out that when the
12 amygdala, and this is this is from the MRI which
13 established brain damage, not -- the PET scan
14 established brain damage in the frontal part of the
15 brain. Brain damage, it's a proven, not rebutted.
16 No other witnesses came in to say that that's wrong
17 so it's right. And with the MRI brain damage in the
18 corpus callosum but more significantly the amygdala.
19 Dr. Wu described what that was and Dr. Olander as
20 well. She's a neuropsychologist, she studied the
21 human brain, but Dr. Wu is a neuropsychiatrist, a
22 medical doctor, and has studied the brain in more
23 depth.

24 But the significance of the impairment that was
25 found in the amygdala which was found to be atrophied

1 by one third at abnormally small was the amygdala
2 modulates perceptions of threat, of fear and it
3 perceives fear and hopefully corrects the body to
4 respond appropriately to it when it's functioning
5 properly. Mr. Bradley's is atrophied by a third
6 and -- which is an abnormal scan and considered brain
7 damage, an abnormal imaging I should say. So, the
8 combination of that according to Dr. Wu is
9 Mr. Bradley is not only likely but more -- probably
10 will misperceive a situation, detect fear even if it
11 really doesn't exist but it's real to Mr. Bradley and
12 then respond to it in a way where he has difficulty
13 and probably will modulating his response to that.

14 This is not a brain damage that Mr. Bradley
15 chose. It's not the correlating effects on his
16 behavior that he chose. And the impact of his
17 childhood and the abusive childhood on Mr. Bradley as
18 it relates to the brain damage which was illustrated
19 by Dr. Wu and Dr. Fallon, he don't choose that
20 either. And so that's a part of which you have
21 before you and if you find those factors proven,
22 brain damage, the abuse, and you have, you have that
23 evidence before you, it's unrebutted, and if you
24 consider that to be mitigating, and how could you
25 not, Mr. Bradley didn't choose those, they had and

1 adverse impact on his life, then you should vote not
2 to kill him.

3 I submit that it's entirely proper, entirely
4 proper on the basis of the abuse and the brain damage
5 alone for you to recommend a sentence of life without
6 patrol for Mr. Bradley. Put him in prison for the
7 rest of his life. Throw away the key. That's where
8 he will be, removed from society in this sewer we
9 call a prison. That would be mercy.

10 Look at his upbringing. Now, it was provided
11 to you by primarily his two brothers and his
12 discussion with Dr. Olander which confirmed what his
13 two brothers said, Keith and Tony, that in the family
14 that Mr. Bradley was raised there were three boys.
15 Tony is the oldest, he's thirty now, Anthony. Middle
16 brother Keith now twenty-eight. Brandon now
17 twenty-four, twenty-two at the time of the killing of
18 Deputy Pill. And the two older brothers have a
19 different father from Mr. Bradley. And then a sister
20 who has a father who's not the father of either of
21 the boys. And a stepfather who was the father of the
22 daughter, Brandon's sister. And how the dynamics in
23 the family were affected by the stepfather.

24 Now, first from -- you heard from Keith first,
25 the second in the line, that from the time he was a

1 small child, which, I mean, he's four years, four
2 years older than Brandon, the stepfather made it very
3 clear to the boys they weren't his, he didn't want
4 them. And not as if that wasn't enough of the point,
5 making the point, he beat them. He didn't just beat
6 them, he make them remove their clothes, he'd line
7 them up, he'd lash them with a belt or palmetto
8 branches which he taped together how ingenious, on
9 their bare bodies until he got tired of doing it,
10 especially when he drank. That's how he let the boys
11 know that he didn't want them. That's what he did
12 from an early age. And according to Keith, Brandon
13 got the brunt of it.

14 Then Anthony came in and testified about how
15 that impacted him and his actions, his demeanor spoke
16 louder than any words which were excruciatingly
17 painful for him to utter on the witness stand and to
18 watch. Do you think the emotion that that man
19 exhibited was scripted? Do you think that the impact
20 on him and his description of is made up? Do you
21 think he just came in to try to save his brother? I
22 mean, he didn't want to be here. He asked me, he
23 said why you asking me things. He didn't want to
24 have to talk about it but he did. And the main
25 reason he didn't want to talk about it, besides it

1 being hardly painful for him, and Keith said the same
2 thing, because I love my mom. They both, they love
3 their mom and they felt like their mom didn't protect
4 them. And more specifically they felt like their mom
5 betrayed them, that their mother instead of
6 protecting them sided with the stepdad. That's how
7 they felt. All the turmoil you saw in Anthony, all
8 the pain you saw in him, all the brokenness, that's
9 Brandon Bradley in a different wrapper. Yeah, they
10 didn't kill anybody but Mr. -- Tony is a broken man.
11 How did he put it? I can't get over this. Beatings,
12 I can't get over it. I tried, I can't.

13 He tried running away, Tony did, maybe it was
14 Keith, I don't know, one of the two brothers, I think
15 Tony, and the police made him come back. He was
16 brought back into the home until he was finally
17 thrown out. So, was Brandon, he was thrown out too.
18 That's the vastly other upbringing that Dr. Fallon
19 was referring to in his book, in his research.
20 That's the vastly different upbringing and this is a
21 vastly different outcome.

22 I think we can all agree that the hottest spot
23 in hell is reserved for people who hurt kids. Kids
24 should be loved, they should be guided, they should
25 be protected, not beaten by some sadistic drunk like

1 Brandon Bradley was and the brothers. Do you think
2 he chose that? You think they chose that upbringing?
3 What kind of a choice does a kid have? What kind of
4 effect does it have on them? You don't need a
5 psychologist to tell you that. I bet those of you
6 who have pets treat your pets better than those boys
7 were treated.

8 Do you think if you put an ad in the paper for
9 kids to get a beating on their bare bodies by some
10 drunken guy in a rage, how many kids do you think
11 would respond to that? How many kids would choose to
12 respond to that? How many parents would show up with
13 their kids and say here's mine? They would be
14 protecting their kids. These kids weren't protected.
15 That's a parent's job to nurture, to love, to guide,
16 to protect, they didn't get that. They didn't choose
17 that.

18 How about when Brandon started smoking pot at
19 the age of twelve. I mean, you know, what kind of a
20 choice is that for a twelve year old. Did he really
21 choose embark on this life of drugs at the age of
22 twelve because it was a knowing, intelligent,
23 voluntarily decision. I mean, does it seem like
24 maybe he wasn't getting the parental guidance that he
25 should have gotten. How could he can smelling of

1 pot, and anybody who's been around it knows that it
2 has a distinctive smell, how is it that his parents
3 didn't pick up on that.

4 Now, you may be thinking, well, maybe that's
5 why Brandon was getting beatings but those beatings
6 started when he was like four -- three, four years
7 old according to the brothers. Brandon -- what kind
8 of a lifestyle would justify a beating like that for
9 a three year old. That's how he came up.

10 And once addicted and with the damage to the
11 frontal part of the brain that increases and makes it
12 even probable according to Dr. Wu that the person
13 will have drug abuse and then addiction problems.
14 What kind of a choice does an addict have. I think
15 we talked about this in voir dire. Do you think it's
16 a choice that addicts have? Do you not see how
17 difficult it is for them to kick that habit.
18 Whatever the habit is, whether it's marijuana, it's
19 Xanax, it's lean, its cough syrup people drink to get
20 high, cocaine, all of that, that's in Mr. Bradley's
21 history. That's his history coming up and it has
22 been for years. Every time he was at the jail or the
23 prison or the hospital when he -- in 2008 when he
24 went to get treated for the head for the automobile
25 accident, he was on those drugs, those very drugs

1 that I mentioned. Been a life long addiction.
2 That's what Dr. Olander said, he fits the addiction
3 profile. And I believe Dr. Skolly said that as well.
4 Mr. Bradley didn't have a choice. He didn't choose
5 brain damage. He didn't choose to be abused, to be
6 sadistically beaten. He didn't have a choice. He
7 didn't have a chance.

8 The drugs in his system at the time is a matter
9 of a debate if you want to look at that way between
10 experts but there's no question that he has had this
11 history which escalated within six months before --
12 around the time that is cousin, Travontey Williams,
13 died of violent death and Carrie Ellison, his then
14 girlfriend, was pregnant with his child, miscarried
15 and the impact on Mr. Bradley of that and his descent
16 into a tail spine of drug abuse, drug use, paranoia,
17 a feeling that there was a hit out on him, which was
18 what Miss Ellison said and what he reported to
19 Dr. Olander, that his friends who he saw, family
20 members, die violent deaths frequently, his run-ins
21 with law enforcement officers who rightly or wrongly
22 Mr. Bradley felt it unnecessarily roughed him up
23 giving this increased sense of paranoia, of fear, a
24 need to feel like he needed to protect himself, but
25 the specific thing that caused him to buy the gun

1 from Mr. Marks according to Miss Ellison was his fear
2 of being hurt by somebody who had a hit out and
3 that's when he got the gun was right around the time
4 of the miscarriage, the death of his cousin,
5 Travontey Williams, when he purchased the gun to
6 protect himself, his fear of this hit and the
7 neighborhood where he lived which is a rough area.
8 Miss Ellison who urged Mr. Bradley to turn himself in
9 for the warrants Mr. Bradley knew he had said that
10 his response was I'm not ready to turn myself in but,
11 you know, if I get arrested I'll just do my time,
12 nothing about any threats to hurt anybody, law
13 enforcement officers, that's -- that was her
14 testimony. She's not involved with him now, she
15 hasn't been for years.

16 But the test -- the use that you get from
17 Dr. Danziger's -- Skolly, Dr. Skolly-Danziger, her
18 testimony is in reviewing the toxicology screen it
19 confirmed thirty hours after the shooting that
20 Mr. Bradley had an extremely high level of THC in his
21 blood and alprazolam, which is Xanax, and then in his
22 urine metabolite benzodiazepines from the alprazolam,
23 also cocaine and also opiates which is the active
24 ingredient in the cough syrup that he drank confirm
25 the consumption of those drugs within the period of

1 time in which Mr. Bradley said he took them.

2 But more telling than that is the testimony of
3 Miss Kerchner that the two of them were on a binge
4 for two weeks smoking blunts around the clock, taking
5 Xanax by the handful, and Mr. Bradley doing some
6 cocaine the morning. That's not an excuse, that's
7 not a justification, that's part of the reality of
8 his life because as Dr. Wu pulled it all together, he
9 said when you have that kind of brain damage and you
10 have the kind of fear that Mr. Bradley had, the
11 misperceptions, the concern for his own safety, his
12 own welfare, that -- and the upbringing that he had
13 as found in Dr. Fallon's research, that's like
14 kerosene on a fire. That's like -- that's like a
15 perfect storm of bad things and the probability is
16 that Mr. Bradley will wind up in the type of
17 situation he was in. Not by his choosing. He
18 doesn't choose the brain damage which causes him to
19 misperceive a situation that's fearful whereas
20 somebody else without the brain damage might not.
21 And the brain damage which keeps him from responding
22 appropriately to a fear which is unrealistic in the
23 first place but not unreal to him.

24 Dr. Olander's -- well, another difference
25 between Dr. Goldberger, I haven't mentioned any

1 differences, let me mention some now, and Dr. Skolly
2 was Dr. Skolly interviewed Mr. Bradley twice,
3 face-to-face interview. She viewed the DVD taken of
4 Mr. Bradley not just during his interrogation but the
5 eight hours before that where he was passed out on
6 the floor, and make no mistake that that's what he
7 was, passed, the DVD of the shooting and the seconds
8 before where she heard Mr. Bradley say I don't -- why
9 you going to shoot me. He's not putting on an act.
10 He's not doing that for anybody's benefit, that is
11 what he said at that point in time. That's what Miss
12 Kerchner said he said. And it suggests that at that
13 point in time whether from the brain damage or from
14 influence of drugs or both or his -- plus the history
15 of his losing friends, relatives to violent deaths
16 and the impact of that on him and his run-ins with
17 the law, which, you know, you break the law you
18 should be arrested, but his perception that the force
19 used was unnecessary, all of that. She interviewed
20 Mr. Bradley and relied on material that
21 Dr. Goldberger agreed was appropriate and the best he
22 could say about it. The inference was -- that he
23 drew from that was that he cannot say on the basis of
24 the toxicology screen alone or the part of the DVD
25 that he did see, which is of the interview which i

1 eight hours after the shooting, all he could say was
2 that you cannot from -- on the basis of the tox
3 screen alone, you cannot conclude or infer that
4 Mr. Bradley was impaired at the time of Miranda.
5 That's what he said. He couldn't go back and he
6 wouldn't go back to the time of the shooting. He
7 couldn't draw any conclusions. He could say that
8 it's not inconsistent with Mr. Bradley being under
9 the influence at the time of the shooting and so --
10 and that's basically what Dr. Skolly said just on the
11 basis of the toxicology screen alone you can't
12 infer -- you can't conclude from that alone that
13 Mr. Bradley was impaired by drugs, but she had more
14 to go on. She saw the earlier part of the DVD, she
15 interviewed Mr. Bradley, she considered the
16 neuropsychological report done by Dr. Olander and her
17 conclusion was Mr. Bradley was clearly impaired to a
18 degree of medical certainty at the time of the
19 shooting.

20 But her testing that was most notable in the
21 detection of a deficit in the processing speed, that
22 is -- well, here's how it's significant. You know,
23 he was given a number of tests, trail making was one
24 and there are others just to test how accurately and
25 quickly he responds to the test. What's notable is

1 in the second grade, we presented her school records,
2 his school records to Dr. Olander, in the second
3 grade he tested at the fortieth percentile in
4 processing speed. In 2013 when Dr. Olander tested
5 Mr. Bradley at the jail he tested anywhere from the
6 first to the eighth percentile. That's a significant
7 drop in his processing speed. And on the basis of
8 that she said that would suggest to her, a
9 neuropsychologist trained in the functioning of the
10 human brain, that there may be some brain damage and
11 so she recommended an MRI, which we have done, and a
12 PET scan, which we have done, and which were
13 interpreted by one of foremost experts in the country
14 if not the world Dr. Wu that, yes, there was brain
15 damage in a number of parts of the brain and these
16 are what these parts of the brain do, these are the
17 functions of these parts of the brain and this is --
18 these are the behavior correlates which you would not
19 only expect as a likelihood but a probability you
20 would expect in somebody with having brain damage
21 that Mr. Bradley has, the miss perception of
22 situations and the inability to modulate behavior.

23 She also interviewed Mr. Bradley. In contrast
24 to that Dr. Zapf did not. In fact, what she relied
25 on were school records, police report, some medical

1 records from the jail, from the prison, an Dr.
2 Olander's report and all of the test results of the
3 tests that were perform by Dr. Olander, she agreed
4 that all these tests were accurately done, that would
5 be the seventy functional IQ, that would be the
6 processing speed deficits, and did not disagree with
7 any of that. What she disagreed with was that at the
8 time of the Miranda Mr. Bradley didn't voluntarily
9 waive his Miranda rights, what she did not address
10 was Mr. Bradley's state of mind at the time of the
11 shooting. The only expert who testified about that,
12 the only two, was Dr. Olander and Dr. Skolly and
13 Dr. Olander who had a chance to do a face-to-face,
14 who does evaluations for a living and testifies in
15 cases occasionally and equally for the state attorney
16 and for the defense attorney, defense, she went on
17 further to say that at the time of the shooting
18 Mr. Bradley was under the influence of a -- that his
19 capacity to conform his conduct under the
20 requirements of law were substantially impaired and
21 that was her professional opinion to a degree of
22 psychological certainty, and that his ability to
23 engage -- that he acted under extreme mental or
24 emotional disturbance. That is unrebutted. That's
25 what she said, that's her testimony. And that his

1 ability to engage in cool, calm reflection at the
2 time of the, which is from the cold, calculated,
3 premeditated instruction, was nonexistent.

4 Now -- nor was there a careful plan, no cool
5 calm deliberation.

6 Now, think about this. At the close of the
7 State's close argument, it was very dramatic and
8 totally unrelated to the situation confronting
9 Mr. Bradley. When Mr. McMaster stopped and said --
10 looked at his watch, let's wait for four minutes
11 and -- to see how long Mr. Bradley had to contemplate
12 and in the brightly lit quiet courtroom in which you
13 could hear a pin drop, the four minutes went by and
14 so that was presumably the time in which Mr. Bradley
15 was thinking about killing the deputy in this
16 situation, but in reality we have a man who's brain
17 damaged, a man who is under the influence of a
18 drugstore full of drugs, street drugs, Xanax,
19 marijuana, cocaine, all of that in his system who is
20 in a car where there is dialogue between Deputy Pill
21 and himself where she's saying get out of the car,
22 she has every right to do that, she had every right
23 to stop Mr. Bradley, but his response is as indicated
24 by his statements to Miss Kerchner, by his statements
25 to the police, by his statements which are barely

1 audible but which are audible in that DVD why you
2 going to shoot me was the exact opposite of sitting
3 in this courtroom in a quiet setting and being able
4 to engage in cool, calm reflection. He didn't have
5 the capacity to do that for a lot of reasons, but
6 that is the un rebutted professional opinion of the
7 only psychologist, neuropsychologist who evaluated
8 Mr. Bradley as to his state of mind at the time of
9 the shooting. And because the State has to prove
10 these aggravating circumstances beyond and to the
11 exclusion of all reasonable doubt, the State has
12 failed to prove that aggravating circumstance of
13 cool, calculated, premeditated.

14 That's notable that the other -- besides the
15 length of time evidence that the State has presented
16 to you on the issue of the heightened premeditation.
17 It's not the same level of premeditation, but for
18 cold, calculated, premeditation its a heightened
19 level of premeditation they offer Miss Kerchner and
20 Mr. Dieguez.

21 And it's interesting to note that Miss Kerchner
22 didn't make these claims about what she says
23 Mr. Bradley was saying in the car until just before
24 she entered a plea nearly a year and a half after the
25 incident and the first time she is now saying

1 Mr. Bradley was -- got this plan that he's not going
2 back to jail, he's going to kill the cracker, and for
3 the first time she is saying that Mr. Bradley is
4 saying these things. And -- nor did she when she was
5 evaluated by a psychiatrist that she testified to and
6 admitted to was hired by her family to evaluate her
7 when she was facing the death penalty. I mean, if
8 she's ever going to cooperate with somebody who's
9 trying to keep her from death row, that would be the
10 time to be forthcoming to say everything there is to
11 say, to shift the blame if need be to some other
12 person. That would be her time to say I heard
13 Mr. Bradley say he was going to, you know, kill a
14 police officer. She didn't say that. She didn't say
15 anything like that. So, the first time that comes
16 out of her mouth is just moments before she enters
17 this plea and gets the charge reduced and sentence
18 reduced to twelve years, which she'll get out in
19 about eight, and all she has to do is testify against
20 Mr. Bradley, pretty sweet deal.

21 And to confirm that they have Mr. Dieguez but
22 what do you know about Mr. Dieguez. He was in jail
23 for trying to shoot up cocaine, for an overdose
24 suicide attempt and -- but what he said on the
25 witness stand was I was stabbed, I was a victim of a

1 robbery. The guy's lying there. He is a seven --
2 how many times, how many felonies does he have.

3 And most significant thing about his testimony
4 which connects Miss Kerchner's is that at some point
5 before Miss Kerchner changed her testimony he had
6 contact with her attorney. Why would he be
7 contacting the attorney? Why would he do that? And
8 what was discussed and what bearing does that have on
9 the change of testimony of Miss Kerchner, I mean the
10 change in her versions. Well, it's just something to
11 think about.

12 On the issue of what's called ideology or the
13 source of the brain damage, you have a number of
14 points where that could have occurred, but, you know,
15 as Dr. Wu testified, the types of anomalies that he
16 saw in the frontal part of the brain could arise from
17 a traumatic brain injury but could be congenital. A
18 person could be born with those.

19 The blows to the brain, one way is -- the
20 damage to the corpus callosum which was detected from
21 the MRI, that could come from a traumatic brain
22 injury, could come from schizophrenia. There's no
23 evidence of that. It could come from post traumatic
24 stress syndrome which can be caused by child abuse.
25 Well, we've got child abuse here and nobody has ruled

1 out post traumatic stress syndrome.

2 And how about this. If there is a point in
3 time Mr. Bradley got a blow to the head before the
4 shooting, how about when he, as Tony and Keith Nelson
5 testified, how about when this drunken stepdad was
6 punching him in the head. Both of them witnessed
7 that, a fist. Now, do you think a fist of a grown
8 man, especially one who's drunk and angry who punches
9 a child in the head, do you think that might
10 potentially do some damage? What do you think? I
11 mean, it doesn't take a doctor to tell you what the
12 likelihood of that is.

13 We have three other possibilities. One was the
14 fall from the monkey bars involving a loss of
15 consciousness. We've got the lock striking his head.
16 We've got this automobile accident in 2008. All
17 possibilities. And the absence of any of that from
18 any record, does there have to be a record, anything
19 in the records to prove that, to establish that it
20 happened, or just because it's not in the records
21 does that prove it didn't happen. Dr. Olander worked
22 in the school system for many years and testified
23 that she in her experience those types of records
24 doesn't wind up in school records. And there's a
25 point in time when school records are purged and

1 sometimes they aren't kept at all. Anybody who's
2 ever obtained school records knows what you get is
3 just not a whole lot and it doesn't reflect
4 everything that ever happened. So, the absence of
5 that information from the school records doesn't
6 prove anything.

7 The State's favorite point here is the point in
8 time would be the SUV going into the ditch. You saw
9 a video, it rolling at a not a high rate of speed on
10 to its side in a water filled ditch, a big splash and
11 what's notable is there's no record of that. I mean,
12 the incident happened, it's on videotape, but was
13 there a head injury there.

14 The police officers testified that when Mr.
15 Bradley was helped up the embankment and then
16 escorted with an officer on each side of him to a
17 patrol car that he had marks on his face or
18 complained of smashing his face or needed medical
19 attention or anything to indicate that there was
20 actually a head injury or that his head came into
21 contact with anything. No, that doesn't exist
22 either. So, the reason why the State is presenting
23 that particular moment is the point in time when
24 there's this brain injury is because, well, it's the
25 most convenient for their purposes but there are

1 earlier times in which are more realistic in
2 Mr. Bradley's life when there were potential head
3 injuries. And as Dr. Wu testified, it could be
4 something that he had from birth.

5 And what's notable also is there is no record
6 in Mr. Bradley's jail records after he went into
7 custody of any head injuries. So, you can presume
8 from that by the State's own theory if it's not in
9 the records, it didn't happen, no head injuries after
10 he was taken into custody to explain the abnormal
11 brain scan.

12 Now, what this is not proof of the head injury,
13 it is not a defense to first degree murder. We're
14 not saying that that head injury and the abuse caused
15 Mr. Bradley to do this, we're saying as Dr. Wu put it
16 the drug abuse beginning at an early age, the brain
17 damage, the effects on Mr. Bradley's behavior, all of
18 that created a perfect storm which made it not just
19 more likely but probably that he would have a vastly
20 different outcome than Dr. Fallon referenced in his
21 book, that if he had had a different upbringing then
22 he would have wound up to be a different man.
23 Mr. Bradley didn't have that type of upbringing. You
24 know what kind of upbringing he had.

25 The prosecutor went through the list of

1 mitigating circumstances individually and dismissed
2 each one separately, dealt with them separately, but
3 that's not what you're asked to do. You're asked to
4 look at the whole picture and all of them and how all
5 of them affect Mr. Bradley, not just take one at a
6 time. Oh, yeah, he lost some friends and it had a
7 profound psychological impact on him but yeah, that
8 taken by itself, you know, that didn't just -- that's
9 no justification for killing a police officer.
10 Nobody says that it is. We're not saying that.
11 We're saying this is whole picture. This is the
12 story as much as we can present it to you as
13 accurately as we can present it of Mr. Bradley's
14 upbringing, his life, how he got from being this
15 child becoming the man who killed a police officer.
16 Wouldn't you want to know that, all of that? And
17 wouldn't you take them together? It's unrealistic to
18 take them separately and dismiss them separately.

19 What many of these mitigating circumstances
20 show you is that having come from this background of
21 abuse and neglect I would submit because he wasn't
22 protected, he still managed to have loving
23 relationships. He still cared about people in his
24 life. According to Anthony Nelson when Brandon's
25 cousin Travontey Williams died he had -- he held

1 Brandon for about an hour, Brandon sobbed in the
2 middle of the street. We're talking about somebody
3 who is capable of feelings and close relationships
4 despite his past, despite where he started, despite
5 where he wound up, the human side of Brandon Bradley.

6 Think about when you go through this list of
7 aggravating circumstances how many of these
8 Mr. Bradley chose for himself. Make the point again.
9 He didn't choose brain damage, which has been proven
10 and non rebutted. The only expert to address that,
11 the only medical doctor to address that and the only
12 experts to address that all agree that it's there.
13 The only disagreement is Mr. Bradley's state of mind
14 at the time of the shooting. All agree that it's
15 there. Do you think he chose that? Of course not.
16 Do you think he chose the abuse? Of course not.

17 Do this I'm asking you, keep in mind a life,
18 Mr. Bradley's life is at stake in this process, take
19 each of the mitigating circumstances and take the
20 position, take turns, take the position that that
21 mitigating circumstance is a good reason to support a
22 life without parole sentence, take that position.
23 Hear what you say, consider what you think, consider
24 the response that you get from the others, but go
25 through that list that way where you take the

1 position that this is a good reason to support a
2 sentence of life without parole. A life is at stake,
3 why would you not do that. Why would you not make
4 that extra effort to go through that list.

5 And do this as well. Think about matters in
6 mitigation, mitigating circumstances that I haven't
7 thought of. Think about it. Are there some that I
8 haven't mentioned? They may occur to you, do the
9 same with those. Is this a good reason for a vote, a
10 recommendation for life without parole, not by itself
11 but taken with everything else. Do a thorough
12 vetting, thorough vetting of the mitigating
13 circumstances, anything you consider mitigating.
14 Maybe I didn't think it, maybe you will. Look for
15 those.

16 We talked about the rights that jurors have.
17 There's no instruction on this but it -- basically
18 it's a golden rule and it has to do with the civility
19 and the courtesy that we all owe each other. Now, in
20 this case the facts are disturbing, no question about
21 it, and the feelings that you may have in discussing
22 this may get a little heated, but there can be no
23 intimidation, no brow beating, no let's gang up on
24 this person because this person doesn't agree with
25 us, or, you know. People are entitled to their own

1 vote and you have the right to have your vote,
2 whatever it is, respected and so if you see bullying,
3 you see -- and I don't expect that, you seem like
4 people that one would not expect that type of
5 behavior from, but when people are in close quarters
6 you never know. You may have seen the movie of
7 Twelve Angry Men. That's Hollywood, but none of
8 that. Be civil and listen to each other and respect
9 each others opinion.

10 Keep in mind you are never required to vote for
11 death. Life without parole is always an option,
12 always. Mercy is always an option. You take in the
13 whole picture, look at this man's life and decide if,
14 yeah, they've proven these aggravating circumstances,
15 yeah, they outweigh the mitigating circumstances, if
16 you conclude that, you may not, but if you do even
17 then life without parole may be an appropriate
18 sentence if you decide that it is. And so I urge you
19 as strongly as I know how with everything in me to
20 grant mercy in this case and vote to recommend that
21 Mr. Bradley be sentenced to life imprisonment. That
22 would be an appropriate sentence based upon the facts
23 of his life. Thank you.

24 THE COURT: Okay. Ladies and gentlemen, it
25 would be appropriate for us at this time to break for

1 lunch. I'm going to ask you to break until 2:00
2 p.m., to report to the jury assembly room at 2:00
3 p.m.

4 Now, after the break there will be instructions
5 that I will read to you and then we will go into
6 deliberations. I tell you that in case you need to
7 make other plans. Once again, it will be up to you
8 how long you wish to go. We'll wait here at your
9 pleasure. If you want to go -- if it's long or if
10 it's short, that will be your termination. If we go
11 into the evening, if we come back tomorrow, that's
12 also your determination as well.

13 During this break you must continue to abide by
14 the rules governing your service as a juror.
15 Specifically, do not discuss this case among
16 yourselves or with anyone else or allow anyone to
17 discuss it in your presence. Do not speak to the
18 lawyers, the parties or the witnesses about anything.
19 Don't read anything about this case and don't do any
20 independent research. Okay. I'll ask you to report
21 to the jury assembly room at 2:00 p.m. Thank you.

22 (Thereupon, the jury was escorted out of the
23 courtroom by the court deputy and the proceedings were had
24 as follows:)

25 THE COURT: Okay. Please be seated. I just

1 want to confirm with the attorneys before we break
2 for lunch that we have an agreement that during the
3 deliberations that the jurors will not be
4 sequestered. I just want to put that on the record.
5 The State agrees?

6 MR. MCMASTER: Yes, Your Honor.

7 THE COURT: And the Defense degrees?

8 MR. MOORE: Yes.

9 THE COURT: All right. Court -- anything else
10 we need to address before we break for recess as
11 well? Okay. Court will be in recess until 2:00 p.m.
12 Thank you.

13 (Thereupon, a lunch recesses taken in the
14 proceedings.)

15 THE COURT: Please be seated. Bring in
16 Mr. Bradley.

17 (Thereupon, the defendant was escorted into the
18 courtroom by the court deputy.)

19 THE COURT: Okay. Any matters that we need to
20 discuss before we bring the jury into the courtroom?

21 MR. MCMASTER: No, Your Honor.

22 MR. MOORE: No, ma'am.

23 MR. LANNING: Yes, ma'am. Judge, we need to
24 review the motion in reference to the State's during
25 their closing argument the evidence demands the

1 (unintelligible) the family of Deputy Pill is asking
2 for the death penalty, the law enforcement community
3 is asking for the death penalty, all (unintelligible)
4 Court's ruling on a mistrial under Article 1, Section
5 3, 9, 16 and 17 and 21 and 22 of the Florida
6 constitution and Amendments 5, 6, 8 and 14 the
7 verdict of death sentence because (unintelligible).

8 THE COURT: Okay. For the record, I'll note
9 your objections. And then I do want to put a case
10 quote on the record with regard to the request for a
11 sentence by the family and the law enforcement
12 community. Miss Ashley, if you could get me that
13 quote, that case quote. Do you have it? Just put it
14 on the record.

15 (Thereupon, a pause was taken in the
16 proceedings.)

17 THE COURT: Okay. It's the case of Peterson
18 versus State. It's found at 94 So.3d 514. It's a
19 Supreme Court case July 23rd, 2012.

20 Okay. We can -- anything else? We can go
21 ahead and bring in the jury.

22 (Thereupon, the jury was escorted into the
23 courtroom by the court deputy and the proceedings were had
24 as follows:)

25 THE COURT: Please be seated. Good afternoon,

1 ladies and gentlemen of the jury.

2 THE JURY PANEL: Good afternoon.

3 THE COURT: Has anyone read or been exposed to
4 reading newspaper headlines and/or articles relating
5 to this trial or its participants?

6 THE JURY PANEL: No.

7 THE COURT: Has anyone seen or heard
8 television, radio or Internet comments about this
9 trial?

10 THE JURY PANEL: No.

11 THE COURT: Have you read any news articles,
12 headlines or anything related to this trial or its
13 participants?

14 THE JURY PANEL: No.

15 THE COURT: Has anyone done any research
16 regarding any matters?

17 THE JURY PANEL: No.

18 THE COURT: And has anyone discussed this case
19 among yourselves or with anyone else or allowed
20 anyone to discuss it in your presence?

21 THE JURY PANEL: No.

22 THE COURT: Okay. Ladies and gentlemen, we
23 will now proceed with final instructions. To assist
24 you in following the law as I instruct you, the
25 instructions have been reduced to writing. We have a

1 copy of the written instructions for each of you.

2 Also, you may take these instructions with you to the
3 jury room for use during your deliberations. You may
4 write on them, do whatever you wish. We will collect
5 them after we've received a verdict. After you
6 deliberate and return your verdict, I will need all
7 twelve of your jury instruction packets back.

8 Members of the jury, I thank you for your
9 attention during this phase of the trial. Please pay
10 attention to the instructions I am about to give.

11 Penalty proceedings, capital cases. It is now
12 your duty to advise the Court as to the punishment
13 that should be imposed upon the defendant for the
14 crime of first degree murder. You must follow the
15 law that will now be given to you and render an
16 advisory sentence based upon your determination as to
17 whether sufficient aggravating circumstances exist to
18 justify the imposition of the death penalty, or
19 whether sufficient mitigating circumstances exist
20 that outweigh any aggravating circumstances found to
21 exist. The definition of aggravating and mitigating
22 circumstances will be given to you in a few moments.

23 As you have been told, the final decision as to
24 which punishment should be imposed is the
25 responsibility of the Judge. In this case as the

1 trial judge that responsibility will fall on me.
2 However, the law requires you to render an advisory
3 sentence as to which punishment should be imposed,
4 life imprisonment without the possibility of parole
5 or the death penalty. Although the recommendation of
6 the jury as to the penalty is advisory in nature and
7 is not binding, the jury recommendation must be given
8 great weight and deference by the Court in
9 determining which punishment to impose.

10 An advisory sentence should be based upon the
11 evidence of aggravating and mitigating circumstances
12 that you have heard while trying the guilt or the
13 innocence of the defendant and the evidence that has
14 been presented to you in these proceedings. It is up
15 to you to decide which evidence is reliable. You
16 should use your common sense in determining which is
17 the best evidence and which evidence should not be
18 relied upon in considering your verdict. You may
19 find some of the evidence not reliable or less
20 reliable than other evidence. You should consider
21 how the witnesses acted as well as what they said.
22 Some things you should consider are:

23 One, did the witness seem to have an
24 opportunity to see and know the things about which
25 the witness testified.

1 Two, did the witness seem to have an accurate
2 memory.

3 Three, was the witness honest and
4 straightforward in answering the attorneys questions.

5 Four, did the witness have some interest in how
6 the case should be decided.

7 Five, did the witness' testimony agree with the
8 other testimony and other evidence in the case.

9 Six, had the witness been offered or received
10 any money, preferred treatment or other benefit in
11 order to get the witness to testify.

12 Seven, had any pressure or threat been used
13 against the witness that affected the truth of the
14 witness' testimony.

15 Eight, did the witness at some other time make
16 a statement that is inconsistent with the testimony
17 he or she gave in court.

18 Nine, was it proved that the witness had been
19 convicted of a felony or a crime involving
20 dishonesty.

21 You may rely upon your own conclusion about a
22 witness. A juror may believe or disbelieve all or
23 any part of the evidence or the testimony of any
24 witness.

25 Expert witnesses. Expert witnesses are like

1 other witnesses with one exception. The law permits
2 an expert to give an opinion. However, an expert's
3 person is only reliable when given on a subject about
4 which you believe that person to be an expert. Like
5 other witness, you should believe or disbelieve all
6 or any part of an expert's testimony.

7 A defendant in a criminal case has a
8 constitutional right not to testify at any stage of
9 the proceedings. You should not draw any inferences
10 from the fact that a defendant does not testify.

11 Rules for deliberation. There are some general
12 rules that apply to your discussion. You must follow
13 these rules in order to return a lawful
14 recommendation.

15 One, you must follow the law as it is set out
16 in these instructions. If you fail to follow the
17 law, your recommendation will be a miscarriage of
18 justice. There is no reason for failing to follow
19 the law in this case. All of us are depending upon
20 you to make a wise and lawful decision in this case.

21 Two, your recommendation must be based only
22 upon the evidence that you have heard from the
23 testimony of witnesses, have seen in the form of the
24 exhibits in evidence, and these instructions.

25 Three, your recommendation must not be based

1 upon the fact that you feel sorry for anyone or are
2 angry at anyone.

3 Four, remember, the lawyers are not on trial.
4 Your feelings about them should not influence your
5 recommendation.

6 Five, it is entirely proper for a lawyer to
7 talk to a witness about what testimony the witness
8 would give if called to the courtroom. The witness
9 should not be discredited by talking to a lawyer
10 about his or her testimony.

11 Six, your recommendation should not be
12 influenced by feelings of prejudice or by racial or
13 ethnic bias or by sympathy. Your recommendation must
14 be based on the evidence and on the law contained in
15 these instructions.

16 Aggravating circumstances. And aggravating
17 circumstance is a standard to guide the jury in
18 making the choice between the alternative
19 recommendations of life in imprisonment without the
20 possibility of parole or death. It is a statutorily
21 enumerated circumstance which increases the gravity
22 of the crime or the harm to a victim. An aggravating
23 circumstance must be proved beyond a reasonable doubt
24 before it may be considered by you in arriving at
25 your recommendation. In order to consider the death

1 penalty as a possible penalty, you must determine
2 that at least one aggravating circumstance has been
3 proved -- proven. The State has the burden to prove
4 each aggravating circumstance beyond a reasonable
5 doubt.

6 A reasonable doubt is not a mere possible
7 doubt, a speculative, imaginary or forced doubt.
8 Such a doubt must not influence you to disregard an
9 aggravating circumstance if you have an abiding
10 conviction that it exists. On the other hand, if
11 after carefully, considering, comparing and weighing
12 all the evidence you do not have a conviction that
13 the aggravating circumstance exists, or if having a
14 conviction it is one which is not stable but one
15 which wavers and vacillates, then the aggravating
16 circumstance has not proved beyond a reasonable doubt
17 and you must not consider it in rendering an advisory
18 sentence to the Court. It is to the evidence
19 introduced during the guilt phase of this trial and
20 in this proceeding and to it alone that you look for
21 that proof.

22 A reasonable doubt as to the existence of an
23 aggravating circumstance may arise from the evidence,
24 conflicts in the evidence or the lack of evidence.
25 If you have a reasonable doubt as to the existence of

1 an aggravating circumstance, you should find that it
2 does not exist. However, if you have no reasonable
3 doubt, you should find that the aggravating
4 circumstance does exist and give it whatever weight
5 you determine it should receive.

6 The aggravating circumstances that you may
7 consider are limited to any of the following that you
8 find are established by the evidence.

9 One, the capital felony was committed by a
10 person previously convicted of a felony and on felony
11 probation.

12 Two, the defendant was previously convicted of
13 a felony involving the use or threat of violence to
14 the person. The crime of robbery is a felony
15 involving the use or threat of violence to another
16 person.

17 Three, the capital felony was committed while
18 the defendant was engaged in the commission of or
19 flight after committing a robbery.

20 Four, the capital felony was committed for the
21 purpose of avoiding or preventing a lawful arrest or
22 effecting an escape from custody.

23 THE COURT: Five, the capital felony was a
24 homicide and was committed in a cold, calculated, and
25 premeditated manner without any pretense of moral or

1 legal justification.

2 Cold means the murder was the product of calm
3 and cool reflection.

4 Calculated means having a careful plan or
5 prearranged design to commit murder.

6 A killing is premeditated if it occurs after
7 the defendant consciously decided to kill. The
8 decision must be present in the mind at the time of
9 the killing. The law does not fix the exact period
10 of time that must pass between the formation of the
11 premeditated intent to kill and the killing. The
12 period of time must be long enough to allow
13 reflection by the defendant. The premeditated intent
14 to kill must be formed before the killing. However,
15 in order for this aggravating circumstance to apply,
16 a heightened level of premeditation demonstrated by a
17 substantial period of reflection is required.

18 A pretense of moral or legal justification is
19 any claim of justification or excuse that though
20 insufficient to reduce the degree of murder
21 nevertheless rebuts the otherwise cold, calculated,
22 or premeditated nature of the murder.