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Electronically Filed 11/08/2013 04:32:35 PM ET

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

CASE NO. 2012-CF-35337-A

STATE OF FLORIDA,

Plaintiff,

vs.

BRANDON LEE BRADLEY,

Defendant.
_____/

MOTION FOR INDIVIDUAL AND SEQUESTERED VOIR DIRE

The Defendant, BRANDON LEE BRADLEY, moves this Honorable Court to Order that prospective jurors in this cause be questioned in voir dire individually and out of the hearing of other prospective jurors, for the purpose of discerning their attitudes relating to capital punishment and their knowledge of the case based upon pretrial publicity, and asserts the following grounds in support of his motion:

1. In order to obtain a fair and impartial jury, it is absolutely essential to inquire of each prospective juror about his knowledge of the offense, the parties, and the witnesses. It is necessary to inquire what the venire person's knowledge is and to ask questions to determine how that knowledge will affect his or her deliberations.

2. The Court may take judicial notice pursuant to Fl. Stat. 90.202(11) and (12) that this case involves the alleged first degree premeditated murder of a Brevard County Deputy Sheriff, Dep. Barbara Pill, which has, since her death on March 6, 2012, been the subject of numerous, extensive and regular newspaper articles and feature stories, as well as rallies and fund raisers, memorials, and extensive television coverage at the local, state and national levels. The potential for exposure to this extensive media coverage and its prejudicial impact upon prospective venire persons warrants intensive inquiry related to the media coverage to best determine the extent of its influence upon prospective jurors. This could best and only be

achieved through individual and sequestered voir dire.

3. By explaining what he or she has heard about the charges or what he or she knows about parties or witnesses, a venire person may very likely impart his knowledge to the other prospective jurors unless there is individual, sequestered voir dire. Such knowledge, which is often based opinion, rumors, hearsay, media coverage, and other sources of inadmissible evidence, can taint the entire venire that is exposed to it and serve to deny the Defendant a fair trial by an impartial jury. *See* Russ v. State, 95 So.2d 594 (Fla. 1957); Moncur v. State, 262 So.2d 688 (2d DCA 1972); Marrero v. State, 343 So.2d 883 (2d DCA 1977); Kelly v. State, 371 So.2d 162 (1st DCA 1979).

4. Prospective jurors in capital cases are routinely questioned by the court, the prosecution, and the defense about the death penalty. Often this questioning is of a repeated and prolonged nature. Such questioning about the death penalty in the presence of the other venire persons focuses attention on penalty before the Defendant has been found guilty as charged. The influence of this procedure, however subtle, undermines the constitutional purpose and functioning of the jury in a criminal trial. "When the case is close, and the guilt or innocence of the Defendant is not readily apparent, a properly functioning jury system will insure evaluation by the sense of the community and will also tend to insure accurate fact finding." Ballew v. Georgia, 98 S.Ct. 1029 (1978), at 1038.

5. Jurors undergoing death qualification would have reason to infer that the judge and the attorneys personally believe the accused to be guilty or expect the jury to come to that conclusion. Only such an inference could serve to explain to the jurors why so much time and energy are devoted to an extensive discussion of penalty before trial. Provided with these cues from people who are not only experts in the courtroom but are also presumably acquainted with all the evidence in the case, the relevant law, and the "correct" application of the one to the other, death-qualified jurors may themselves become more inclined to believe that the accused is guilty as charged. Hovey v. Superior Court of Almeda County, 616 P.2d 1301 at 1348 (Cal. 1980). The process of non-sequested death-qualification is constitutionally impermissible because, as in Witherspoon, it produces a jury "uncommonly

willing to condemn a man to die." Witherspoon v. Illinois, 391 U.S. 510, 88 S.Ct. 1770 (1968) at 1776.

6. During a non-sequestered death-qualifying voir dire, venire persons are questioned in open court about their attitudes toward the death penalty. The fact that the court dismisses those venire persons who express unequivocal opposition to the death penalty is likely to be interpreted by the remaining jurors as an indication that the judge in particular and the law in general disapprove of such attitudes. Jurors whose scruples against capital punishment are not so irrevocable as to prevent or substantially impair the performance of their duties as jurors under Witt feel that in the eyes of the law, their attitudes are improper, or at least suspect. Those jurors may in consequence feel less willing to express or rely on such attitudes in their consideration of penalty. Wainwright v. Witt , 469 U.S. 412, 83 L.Ed. 2d 841, 105 S.Ct. 844 (1985); Hovey, *supra* at 1350.

7. The most practical and effective procedure available to minimize the untoward effects of death-qualification is individualized sequestered voir dire. Because jurors would then witness only a single death-qualifying voir dire—their own—each individual juror would be exposed to considerably less discussion and questioning about the various aspects of the penalty phase before hearing any evidence of guilt. Such a reduction in the pretrial emphasis on penalty should minimize the tendency of a death-qualified jury to presume guilt and expect conviction. Hovey, *supra*, at 1353.

8. To deny this motion is to deny the Defendant his right to a fair trial by an impartial jury comprised of a representative cross-section of the community, in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article 1, Sections 2, 9, 16, 17, 21 and 22 of the Florida Constitution.

WHEREFORE, the Defendant prays this Court will grant the above motion for individual and

sequestered voir dire.

CERTIFICATE OF SERVICE

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

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