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

STATE OF FLORIDA,
Plaintiff,

CASE NO. 052012CF035337AXXXXX

vs.

BRANDON LEE BRADLEY,
Defendant.
_____/

STATE'S SENTENCING MEMORANDUM IN SUPPORT OF DEATH PENALTY

COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, and pursuant to this Court's "ORDER RE: STATUS CONFERENCE ON APRIL 8, 2014", hereby submits this sentencing memorandum in support of the imposition of a sentence of death upon the Defendant as to Count 1 of this case, and in support thereof states as follows:

PROCEDURAL HISTORY OF THE CASE

On March 6, 2012, the Defendant BRANDON BRADLEY (hereinafter "Bradley" or "Defendant") and co-defendant ANDREA KERCHNER (hereinafter "Kerchner" or "Co-defendant") were apprehended and detained by officers with the Melbourne Police Department and the Brevard County Sheriff's Office following a robbery at a local motel and the ensuing shooting and ultimate death of Deputy Barbara Pill of the Brevard County Sheriff's Office. Later that same day, arrest warrants were issued and served upon both the Defendant and the Co-Defendant. The Defendant Bradley was charged with First Degree Premeditated Murder and Robbery With A Deadly Weapon.

On April 3, 2012, the matter was presented to a Grand Jury which returned an Indictment charging Defendant Bradley with: COUNT 1: FIRST DEGREE PREMEDITATED MURDER OF A LAW ENFORCEMENT OFFICER, a capital felony; COUNT 3: ROBBERY, a second degree felony; COUNT 5: FLEEING OR ATTEMPTING TO ELUDE – HIGH SPEED OR WANTON DISREGARD, a second degree felony; and COUNT 6: RESISTING AN OFFICER WITH VIOLENCE, a third degree felony. Extensive discovery and motion proceedings followed as the parties prepared for trial.

Following the Court's order granting a severance of the Defendant and Co-defendant's trials, a plea agreement was reached with Co-Defendant Kerchner and on January 23, 2014 she pled guilty to several charges and was sentenced. As part of her plea agreement, Kerchner agreed to testify against Defendant Bradley at his trial. Pursuant to this Court's "ORDER ON JANUARY 13, 2014 STATUS CONFERENCE", jury trial was scheduled to begin in Defendant Bradley's case for February 24, 2014.

On February 24, 2014, jury trial began with jury selection and the questioning of the first of several venire panels. Jury selection continued for the next several weeks and was completed on March 18, 2014 at which time the trial jury was sworn and the trial proceeded with opening statements and the State began its case-in-chief. On March 27, 2014 the State rested its case, defense motions for Judgment of Acquittal were denied, and the Defense proceeded with the presentation of defense witnesses. On March 31, 2014 the Defense rested its case, and the State proceeded with rebuttal witnesses. On April 1, 2014, all testimony had been completed and the parties proceeded with closing arguments followed by the Court's jury instructions. The jury's deliberations began immediately following the Court's instructions and the jury returned a verdict that afternoon finding the Defendant Bradley Guilty As Charged on all four counts in which he was charged. Following the verdict, court was recessed and the jury excused (by stipulation of the parties) until April 3, 2014 at which time the penalty phase was scheduled to begin.

On April 3, 2014 the penalty phase began with opening statements by counsel after which the State presented several witnesses and rested. The Defense began presenting its penalty phase witnesses the same day and continued until April 8, 2014 at which time they rested. The State called no rebuttal witnesses and both parties presented closing arguments to the jury, the Court instructed the jury on the law relating to the penalty phase, and the jury began deliberations. Later that afternoon, the jury returned with an "Advisory Sentence" recommending that the Court impose the death penalty upon Bradley by a vote of 10 to 2.

On June 5, 2014, the Court held a "Spencer" hearing at which time the State presented the testimony of several family members of Deputy Pill. The Defense presented no additional testimony or evidence. The case has been scheduled for formal sentencing on June 27, 2014.

SUMMARY OF THE FACTS

The Defendant BRANDON LEE BRADLEY, a/k/a BRANDON LEE BRANTLEY, had by the age of 22, been convicted of four felony offenses for which he had served two years in the Florida Department of Corrections and been placed on probation to follow his release from DOC. By February of 2011, however, the Defendant had absconded from his probation supervision causing the probation department to request the issuance of warrants for his arrest, which warrants were issued on February 14, 2011. During the following year, the Defendant continued to avoid apprehension by the police, having decided that – despite being aware of the outstanding arrest warrants -he would not go back to prison, sentiments that he had expressed to several people, including two former girlfriends, Carrie Ellison and Amanda Ozburn. One one occasion in late 2011, while riding in a car with Ms. Ozburn, the Defendant observed several police vehicles and became visibly nervous, expressing his concerns about being apprehended and repeating his intention of not to go back to prison. Also in late 2011, the Defendant obtained a firearm, a semi-automatic Glock 40 caliber pistol, from Robert Marks, who had stolen the firearm from his sister's boyfriend and sold it to the Defendant. During this time frame the Defendant was observed by his friends (Ellison, Ozburn and Kerchner) to carry the weapon, or similar weapons, on his person or nearby at all times.

By late February of 2012, the Defendant had re-connected with an individual (Andrea Kerchner) he had known when he was younger and who now worked as an exotic dancer and who had sought the Defendant out because of his access to certain drugs that she craved. For the next two weeks after re-connecting, the Defendant and Ms. Kerchner engaged in the abuse of several drugs on a continuing basis, culminating in a drug-binged evening spent at a local motel, the EconoLodge/York Inn.

On the morning of March 6, 2012, after a night of drug abuse, the Defendant and Ms. Kerchner were scheduled to depart the motel. However, rather than just "checking out" and leaving, the two began to remove numerous items from their hotel room, placing them in the vehicle that the Defendant had obtained – a white Ford SUV which was parked in the motel parking lot near their room. Both the Defendant and Ms. Kerchner were observed by another motel guest, Christopher Montesanto, carrying various items of motel property from their room and placing them in or near the white SUV. Their activities soon attracted the attention of motel employees who also observed motel property, including paintings, a dresser, bedding and

other objects belonging to the motel, in and around the Defendant's vehicle. Ultimately, the motel employee's observations led them to gather together to confront the Defendant and Ms. Kerchner about the apparent theft of motel property. Employee's Andrew Jordan, Tammy Brown, Vanessa McNerney and Yves Joseph confronted the Defendant and Ms. Kerchner at the Defendant's vehicle in the parking lot, surrounding the vehicle and demanding that the motel property be returned. The employees further alerted the motel owner, Mohammed Malik, who also arrived at the scene and assisted in confronting the Defendant and Ms. Kerchner. Despite the employees/owner's demands to return the property, the Defendant got into the vehicle in the driver's seat with Ms. Kerchner entering the front passenger seat, and they attempted to leave the area. However, Mr. Jordan was standing in front of the Defendant's vehicle blocking its exit from the parking space. Despite the location of Mr. Jordan directly in front of him, the Defendant started the vehicle and pulled forward, forcing Mr. Jordan to jump out of the way in order to avoid being run over by the SUV. As he moved out of the way of the vehicle, Mr. Jordan was struck on the side of his body as the SUV brushed by him and exited the parking lot with much of the motel property still inside. As these events were transpiring, Mr. Jordan had called 911 and handed the phone to Mr. Malik who relayed to the police the description and the license tag number of the vehicle, along with its direction of travel.

Deputy James Troup with the Brevard County Sheriff's Office (BCSO) was assigned the call and he headed toward the motel to meet with the complainant. BCSO Deputy Barbara Pill, who was on duty that date in full uniform driving a marked patrol vehicle and patrolling the same general area as Deputy Troup, finished a traffic stop that she was on and began searching for vehicles that matched the description of the SUV that had been reportedly involved in a "theft from the motel". As Deputy Troup reached the motel and began speaking to the employees, Deputy Pill was driving toward the area of the motel while looking for the vehicle. Just a few minutes after the call went out, she was driving southbound on John Rhodes Boulevard when she observed the Defendant pass her driving his SUV northbound on John Rhodes Boulevard. As the vehicle appeared to match the description broadcast by the BCSO dispatcher, Deputy Pill turned her vehicle around and raced after the Defendant's vehicle, finally catching up with it in the area just north of Eau Gallie Boulevard. Upon confirming that the license tag on the SUV matched the one given by the dispatcher, Deputy Pill activated her overhead emergency lights

and proceeded to stop the Defendant's vehicle which came to a stop just off John Rhodes Boulevard on Elena Way, a short residential street running west off of John Rhodes.

The in-car video system installed by BCSO in Deputy Pill's patrol vehicle was engaged by the activation of her overhead lights, and the ensuring contact between Deputy Pill and the Defendant was captured on video and played for the jury during trial. In the video, Deputy Pill can be seen and heard repeatedly asking the Defendant to exit the vehicle, which the Defendant can be heard through the partially-opened front driver's door refusing to do. When the Defendant appeared to be attempting to drive off at one point, pulling his vehicle slowly forward for several feet, Deputy Pill can be seen approaching the vehicle's driver's door and reaching into the vehicle, apparently attempting to retrieve the keys to the vehicle. At that time, the Defendant pulled a semi-automatic handgun and fired at Deputy Pill at "point-blank" range, firing seven times and hitting Deputy Pill four times, causing five different gunshot wounds, including one in the head that the medical examiner, Dr. Sajid Qaiser, characterized as "fatal". As noted by Deputy Troup, who was the first Deputy to arrive at the scene and the paramedics who arrived on scene to assist, and as was shown on the in-car video, Deputy Pill never pulled her own weapon – it was still in its' holster when he arrived on-scene less than one minute after the shooting. Immediately following the shooting, the Defendant's vehicle can be seen driving away from the area, leaving Deputy Pill's mortally wounded body lying in the middle of the street.

In addition to the in-car video which recorded the shooting, it was witnessed by a citizen who lived right next to where the SUV had stopped and who had arrived home just before the shooting took place. That citizen, Trista Lowman, testified that she had observed a black male in the driver's seat talking to the Deputy and that there was a second person in the passenger seat who she believed to be a female. That person, in fact, was the co-defendant, Andrea Kerchner, who also witnessed the shooting and testified at the Defendant's trial. Ms. Kerchner testified regarding the robbery at the motel and the ensuing traffic stop and shooting of Deputy Pill by the Defendant. She testified that when Deputy Pill spotted their vehicle and turned her patrol car around to follow them, the Defendant remarked with words to the effect that "the cracker saw my face and she got my tag – I got to kill that bitch". Ironically, those words were also heard by a man, Jeffrey Dieguez, that Ms. Kerchner had contacted by telephone, apparently in an attempt to obtain drugs from or sell drugs to him. Mr. Dieguez testified that while listening to

an open line that Ms. Kerchner had left on her cellphone, he heard the Defendant make the statements above and then a short time later heard the shots that killed Deputy Pill.

Following the shooting, Ms Lowman called 911. Upon the arrival of Deputy Troup at the shooting scene Ms. Lowman provided the last direction of travel for the SUV and a BOLO (be on the lookout) was broadcast for its apprehension. Numerous police officers from various law enforcement agencies immediately responded to the area and began looking for the SUV. A short time later, a Melbourne Police Officer, Derek Middendorf, spotted a white SUV on a side road near the shooting scene, and notified other officers where he had spotted, then lost sight of, the SUV. Dozens of officers began flooding the area looking for the vehicle.

While the officers continued looking for the SUV, unbeknownst to them, the Defendant had fled in his vehicle through several back yards in a residential neighborhood and ended up parked in a driveway on a street parallel but a block over from where it had been spotted by Officer Middendorf. However, the vehicle, and Ms. Kerchner, were discovered by the homeowner who raised the alarm with some police officers who were out on foot searching a nearby wooded area, and the Defendant and Ms. Kerchner got back in the vehicle and attempted to flee again. This time, however, other police units, including a police helicopter, soon spotted them and the chase was on with Sgt. Trevor Schaffer of the Melbourne Police Department the first in line behind the Defendant's vehicle. Sgt. Schaffer was in a marked police car with his lights and siren activated attempting to stop the Defendant, and other officers - also in marked patrol units with lights and sirens on – followed close behind. The Defendant refused to stop, exiting the residential area and driving northbound on Turtlemound Road, running through stop signs, swerving into the opposite lane of travel and doing whatever he could to avoid the units pursing him. Despite his efforts, the police were able to deploy stopsticks at various locations which resulted in several of the Defendant's vehicle's tires being deflated and the Defendant ultimately losing control of his vehicle and crashing into a ditch on Parkway Drive, where he and Ms. Kerchner were ultimately taken into custody.

After being removed from the vehicle, the Defendant and Ms. Kerchner were taken separately to the BCSO Criminal Investigations Division office where they were each ultimately interviewd. The Defendant's interview was conducted after the interview of Ms. Kerchner, and his interview took place approximately seven hours after the apprehension, during which time the Defendant was allowed to sleep in a small room at the CID office. Prior to his

statement, the Defendant was read his Miranda Rights, which he acknowledged he understood and which he agreed to waive and to speak to the officers. Thereafter, the Defendant admitted that he was the one who had shot Deputy Pill, disclosing where he had obtained the firearm and where it would be located.

While the apprehension and subsequent interviews of the suspects was continuing, other law enforcement personnel were processing the various crime scenes; the hotel robbery scene; the burglary scene; the shooting scene, and the apprehension scene. Various items of evidence were obtained at each of the scenes, including spent cartridge casings and projectile fragments from the shooting scene, a cellphone from the burglary scene; and photographs from all of the scenes. An autopsy was conducted on the remains of Deputy Pill the following day which also resulted in obtaining additional evidence, including projectiles and fragments from her body. Finally, a warrant was obtained to search the Defendant's vehicle which resulted in securing the firearm that was used to kill Deputy Pill, an additiioanal spent cartridge casing, additional ammunition and gun magazines as well as DNA evidence and fingerprint evidence, all of which were subsequently examined by experts with the Florida Department of Law Enforcement (FDLE).

Amy Siewert, a FDLE Crime Laboratory Analyst in the Firearms Section, testified regarding her analysis of the 40 caliber Glock model 27 semiautomatic pistol that was recovered from the Defendant's vehicle where the Defendant told Agents it would be located. Ms. Siewert determined that the cartridge casings found at the scene of the shooting had been fired in the Glock firearm recovered from the Defendant's vehicle. She further determined that various recovered projectiles, including the ones' removed from Deputy Pill's remains by the medical examiner, also matched and were fired from the Glock firearm recovered from the Defendant's vehicle.

BCSO Crime Scene Analyst Virginia Casey also testified regarding latent fingerprints that were lifted from a box of ammunition located in a piece of luggage in the Defendant's vehicle. She compared those latent prints to fingerprint "standards" obtained directly from the Defendant and determined that they were a match. The remaining ammunition in the box was the same type of ammunition that was in the Glock firearm used to kill Deputy Pill.

Finally, Corey Crumbley. a FDLE Crime Laboratory Analyst in the Biology Section, testified regarding his comparison of the Defendant's DNA –obtained directly from the

Defendant – to various DNA profiles that had been located on various items of evidence, including the Glock Firearm/murder weapon. Significantly, he determined that Ms. Kerchner's DNA was excluded as matching any of the DNA recovered from the firearm. Most importantly, however, Analyst Crumbley determined that the Defendant's DNA matched the DNA sample that was located on the textured areas of the handgrip on the firearm and it also matched the DNA sample that had been located on the trigger of the firearm. Literally, Analyst Crumbley's testimony put the defendant's finger on the trigger of the firearm that killed Deputy Pill.

The State respectfully submits that the evidence of the Defendant's guilt of the crime of First Degree Premeditated Murder of Deputy Barbara Pill, a Law Enforcement Officer, was overwhelming.

LIST OF STATUTORY AGGRAVATING CIRCUMSTANCES THE STATE RELIED UPON

Pursuant to defense motion and this Court's Order, on January 22, 2014, the State filed its "NOTICE OF FILING OF STATUTORY 'AGGRAVATING CIRCUMSTANCES' IT INTENDS TO RELY ON" specifying the following "Aggravating Circumstances" as the ones it intended to rely upon in seeking the imposition of a death sentence in this case:

F.S.S. 921.141(5)

(a) The capital felony was committed by a person previously convicted of a felony and ... placed on ... felony probation.

(b) The defendant was previously convicted of ... a felony involving the use or threat of violence to the person.

(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any robbery.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

(j) The victim of the capital felony was a law enforcement officer engaged in the performance of ... her official duties.

MEMORANDUM OF LAW
RE: AGGRAVATING CIRCUMSTANCES

A) THE CAPITAL FELONY WAS COMMITED BY A PERSON PREVIOUSLY CONVICTED OF A FELONY AND PLACED ON FELONY PROBATION

As set forth more fully in the Summary of the Facts, the State proved that the defendant had been previously convicted of several felonies and placed on probation which was still active at the time of the commission of the murder of Deputy Pill on March 6, 2012. Florida Department of Corrections Probation Officer Charles Colon testified that although Defendant Bradley was in violation status on March 6, 2012, he none-the-less was still on probation in the following cases for the following felony convictions:

1) In Case No. 052007CF061680AXXX for the felonies of BURGLARY OF CONVEYANCE (F3) and GRAND THEFT (F3);

2) In Case No. 052008CF031707AXXX for the felony of POSSESSION OF COCAINE (F3); and

3) In Case No. 052008CF036782AXXX for the felony of ROBBERY (F2).

Copies of the Judgments and Sentences for each of the above-captioned cases were entered into evidence during trial as Exhibit 186, Exhibit 184 and Exhibit 185, respectively, which clearly reflect the prior convictions and that the Defendant had been placed on probation for such felonies.

The State asserts that this aggravating circumstance should be given great weight by the Court. A person's past conduct speaks volumes about one's character. A pillar of our judicial system is the premise that prior crimes enhance the penalty for current crimes, which premise is reflected not only in the general statutory sentencing guidelines scheme but is also further emphasized as the Florida legislature determined that it should be one of the few statutory "aggravating circumstances" that can justify a death sentence. Here, the Defendant had previously committed four felonies in three separate cases for which he was permitted the privilege to serve a portion of his sentences on probation, which the Defendant violated by

absconding from probation and subsequently committing additional new law violations, including the instant murder of a law enforcement officer. Other courts have found that the "prior felony conviction and on probation" aggravating circumstance should be given great weight in determining the appropriate sentence to impose in a capital case – and such determinations have been upheld by the Florida Supreme Court. *See* Caylor v. State, 78 So.3d 482 (Fla. 2011); Miller v. State, 42 So.3d 204 (Fla. 2010)(Parole); Simpson v. State, 3 So.3d 1135 (Fla. 2009).

B) THE DEFENDANT WAS PREVIOUSLY CONVICTED OF A FELONY INVOLVING THE USE OR THREAT OF VIOLENCE TO THE PERSON

The State also proved that the Defendant was previously convicted of a felony involving the use or threat of violence to a person. In particular, the State proved that the defendant had previously been convicted of Robbery in Case No. 052008CF036782-AXXX. As noted above, a copy of the Judgment and Sentence in said case was entered into evidence as Exhibit 185, and Correctional Probation Officer Charles Colon testified that the Defendant was on probation for such crime at the time of the murder of Deputy Pill. Additionally, during the penalty phase the State called the victim in that case, Gary Shrewsbury, who testified that in fact the incident was, in fact, an armed robbery during which the Defendant was armed with a firearm which he used to threaten the victim. A Melbourne Police Officer was also called to testify that he responded to the robbery call and that he located a fully loaded semi-automatic handgun/firearm near the defendant.

Once again, the Defendant's past conduct speaks volumes about his character. Having previously been engaged in, and convicted of, a robbery, the Defendant none-the-less engaged in another robbery – as found by the jury in the instant trial – which directly led to the attempt by Deputy Pill to apprehend the Defendant and her subsequent murder by the Defendant. While the original robbery conviction involved the use of a firearm as the "threat" to that victim, in the instant case he utilized his large SUV vehicle to intimidate and threaten the motel employee who tried to prevent him from stealing the motel's property. The State asserts that this "prior violent felony" aggravating circumstance should be given great weight, as other courts have done and which findings have been previously upheld by the Florida Supreme Court. *See:* Gonzalez v.

State, 136 So.3d 1125 (Fla. 2014); Simpson v. State, 3 So.3d 1135 (Fla. 2009); England v. State, 940 So.2d 389 (Fla. 2006).

Additionally, the Defendant's conviction by this jury of the Robbery charge in Count 3 of the Indictment (renumbered as Count 2 for this trial) would also qualify as a "previous conviction" as Florida law recognizes that "contemporaneous" convictions for violent felonies can be considered as an aggravating circumstance for determining whether the death penalty would be appropriate. *See*: Gonzalez v. State, 136 So.2d 1125 (Fla. 2014)(citing Pham v. State, 70 So.3d 485 (Fla. 2011); Kormundy v. State, 845 So.2d 41 (Fla. 2003)(FN3).

C) THE CAPITAL FELONY WAS COMMITTED WHILE THE DEFENDANT WAS ENGAGED, OR WAS AN ACCOMPLICE, IN THE COMMISSION OF OR FLIGHT AFTER COMMITTING ANY ROBBERY

The Defendant was charged with and convicted by the jury of the crime of Robbery in the instant case arising from his actions at the motel in driving his SUV vehicle at and striking the motel employee who was trying to prevent the Defendant and Co-defendant from leaving the motel with the motel's property. The evidence established that the murder of Deputy Pill took place only several minutes after the Defendant fled the scene of the robbery at the motel and only a few miles away. Clearly, the Defendant had not reached any "place of temporary safety" and that there was no "definitive break in the chain of circumstances beginning with the felony and ending with the killing". Under such circumstances, Florida courts have held that the murder is committed during the course or commission of the original crime. Griffin v. State, 639 So.2d 966 (Fla. 1994); Parker v. State, 570 So.2d 1048 (Fla. 1st DCA1990); Baines v. State, 25 So.3d 1277 (Fla. 4th DCA 2010).

Once again, the Florida Legislature has included an aggravating circumstance in its death penalty scheme which directly applies to this Defendant, and once again, the State urges this Court to give it great weight. Commission of the underlying felony crime of robbery is serious enough on its own, but when compounded by a capital crime committed during its commission, or in the flight following its commission, it rises to a level justifying the imposition of the most severe sanction, the death penalty. As with the previous Aggravating Circumstances, other Florida courts have given such "aggravator" great weight and their findings have been affirmed

by the Florida Supreme Court. *See:* King v. State, 130 So.3d 676 (Fla. 2013)(Burglary); Baker v. State, 71 So.3d 802 (Fla. 2011); Phillips v. State, 39 So.3d 296 (Fla. 2010).

D) THE CAPITAL FELONY WAS A HOMICIDE AND COMMITTED IN A COLD, CALCULATED, AND PREMEDITATED MANNER WITHOUT ANY PRETENSE OF MORAL OR LEGAL JUSTIFICATION.

The evidence presented at the trial of this cause showed that the Defendant, who had previously been convicted of several felonies and placed on probation, had violated the terms of his probation causing arrest warrants to be issued for his arrest in February of 2011. The Defendant, being aware of the outstanding arrest warrants, had repeatedly expressed his desire NOT to return to prison and his intention to take action to prevent being apprehended by the police. By late 2011 he was expressing visible concern when he observed police vehicles in his general location, and he had taken the dangerous step of arming himself with a firearm, which he carried on his person.

During the robbery at the motel the Defendant was told by the motel employees that they were calling the police and they actually called "911" in the Defendant's presence, relaying to the police the Defendant's vehicle description and license tag number. At that point the Defendant was certainly aware that the police would be looking for his vehicle and, if found, would discover his outstanding warrants. As the Defendant fled from the scene of the robbery, his potential apprehension and his feared return to prison had to be foremost in his mind. Only a few minutes after leaving the motel the Defendant's worst fears were realized when Deputy Barbara Pill, who was looking for the Defendant's vehicle following the 911 call, spotted the Defendant's vehicle as it passed her patrol car on John Rodes Boulevard. After turning her patrol vehicle around and catching up to the Defendant's vehicle, Deputy Pill turned on her emergency lights and proceeded to conduct a traffic stop on the Defendant's vehicle.

For the next three minutes and forty two seconds, the time that elapsed from when Deputy Pill turned on her emergency lights until the Defendant fired the shots that ended her life, the Defendant had additional time to concentrate his thoughts and reflect on what he was going

to do. What he ultimately, consciously decided to do was to intentionally take the deputy's life rather than risk going back to prison for the outstanding probation warrants and/or for the robbery that had just taken place. The testimony clearly demonstrated that the Defendant had a "substantial period of reflection and thought" by the Defendant. In fact, the testimony of the co-defendant Kerchner showed that the Defendant chose to proceed to shoot the deputy, just as he had stated his intent to do when he told her that "the cracker saw my face and got my tag number, I got to kill the bitch". Despite Ms. Kerchner's efforts to talk the Defendant out of shooting the deputy, telling him repeatedly, "no baby, you don't have to do that", the Defendant sealed his own fate, and that of Deputy Pill, when he took the firearm he had been carrying and fired it seven times at the Deputy at point blank range, inflicting motal wounds upon Deputy Pill and leaving her lying in the street as he drove away. Under similar circumstances, other Florida courts have found that the "cold, calculated and premeditated" aggravating circumstance had been established beyond a reasonable doubt, and the Florida Supreme Court has agreed. *See*: Griffin v. State, 639 So.2d 966 (Fla. 1994); Valle v. State, 581 So.2d 40 (Fla. 1991)(two to five minutes elapsed from time that defendant left police officer's car to get gun and slowing walk back to shoot and kill officer).

The State respectfully suggests that the Court give this important aggravating circumstance "great weight".

E) THE VICTIM OF THE CAPITAL FELONY WAS A LAW ENFORCEMENT OFFICER ENGAGED IN THE PERFORMANCE OF HER OFFICAL DUTIES,

AND

F) THE CAPITAL FELONY WAS COMMITTED FOR THE PURPOSE OF AVOIDING OR PREVENTING A LAWFUL ARREST OR EFFECTING AN ESCAPE FROM CUSTODY.

Although the two aggravating circumstances cited above are separate and distinct factors in the death penalty statute, case law has determined that under certain circumstances – such as when the victim of the homicide is a law enforcement officer - the two can "merge" and should be considered as only one factor in order to avoid impermissible "doubling". *See*: Griffin v. State, 866 So.2d 1 (Fla. 2004); Wheeler v. State, 4 So.3d 599 (Fla. 2009). By the same token, where the victim of the homicide was a law enforcement officer engaged in the performance of

his duties, the Florida Supreme Court "has found the [avoid arrest] aggravator applicable without any discussion of the adequacy of the evidence [citations omitted]". Griffin v. State, supra at p.17.

In this case, the evidence clearly established that Deputy Barbara Pill was a law enforcement officer engaged in the performance of her official duties and that her murder was committed for the purpose of avoid a lawful arrest or effecting an escape from custody. There can be no doubt that the shooting death of a fully uniformed police officer conducting a traffic stop on a felon fleeing from the scene of a robbery, who also had outstanding arrest warrants, and who had expressed his intent not to return to prison, establishes these two aggravating circumstances beyond any reasonable doubt and such factor should be given "great weight" by this court.

MITIGATING CIRCUMSTANCES

The Defense presented evidence regarding a total of twenty-three alleged mitigating circumstances, the first three of which are set forth as individual mitigating circumstances in the death penalty statute, [to-wit sections (6)(b), (f) and (g) of (F.S.S. 921.141] and the remaining which fall under the "catch-all" provision of section (6)(h) of the statute. The "mitigating circumstances" that the defense urged the jury – and now this court - to consider are:

1) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance. [section (6)(b)];

2) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired. [section (6)(f)];

3) The age of the defendant (22) at the time of the crime. [section (6)(g)];

4) The defendant was severely physically abused as a child;

5) The defendant was verbally and emotionally abused as a child;

6) The defendant's mother chose his stepfather over her own children and failed to protect him from their stepfather's abusive treatment;

7) The defendant witnesses the physical, verbal and emotional abuse of his siblings

by his stepfather;

8) The defendant witnessed the physical, verbal and emotional abuse of his mother by his stepfather;

9) As a child, the defendant had no loving father figure or male role model;

10) The defendant has a close, loving relationship with his brother Anthony Nelson;

11) The defendant is known by his family and friends to be generous and has contributed financially to the support of his mother and friends;

12) The defendant was addicted to and abused drugs from an early age;

13) The defendant suffers from brain damage and brain fucnctional deficits;

14) The defendant suffered head injury and possible traumatice brain injury:

15) In October, 2011, Travanti Williams, Defendant's cousin, was shot to death, which had a devastating emotional and psychological impact on the defendant;

16) The defendant had a two year relationship with Carrie Ellison during which she became pregnant with his child. She miscarried a few days after the death of Travanti Williams. Thereafter, the defendant began a period of significantly greater drug abuse;

17) Following the loss of his cousin and his girlfriend's miscarriage, the defendant appeared to be distrustfuly of the motives of others, paranoid, and believed that a "hit' was placed on his life and obtained a gun to protect himself;

18) Several of the defendant's friends and relatives were murdered, or died, which appeared to emotionally affect the defendant;

19) The defendant has been diagnosed with, and is being treated for mental disorders with psychotropic medications;

20) The defendant has also been diagnosed with Polysubstance Dependence, In remission in a controlled environment; and Passive and Dependent Personality traits;

21) The defendant has a full-scale IQ of 70, as assessed in 2013 by the WAIS IV;

22) The defendant was cooperative with law enforcement and confessed;

23) The existence of any other factors in the defendant's character, background or life, or the circumstances of the offense that would mitigate against the imposition of the death penalty.

As this court heard during the testimony and arguments presented at trial, the State contested several of the alleged "mitigating circumstances", particularly with respect to the allegations of: (1) the defendant being under the influence of "extreme mental or emotional disturbance"; (2) his inability "to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law"; (13) "brain damage and brain functional deficits; (14) "head injury and possible traumatic brain injury: and (19) the "diagnosis with and treatment for mental disorders".

Wtth respect to the first two alleged mitigating circumstances, this Court heard the conflicting testimony of doctors Jacquelyn Olander (for the defense) and Patricia Zapf (for the state), with Dr. Olander opining that the defendant suffered from numerous mental problems which affected his ability to control his conduct, and Dr. Zapf testifying that while the defendant may have certain limitations, it did not meaningfully affect his ability to obey the law. Likewise, there was conflicting testimony presented by the defense and the state with respect to when any brain damage was suffered by the defendant and when it may have become necessary for the defendant to receive the treatment for his mental disorders – the defense contending they arose before the murder of Deputy Pill and the State arguing that the evidence most likely showed that the injury was suffered in the vehicle crash following the murder.

In any event, the jury obviously heard this testimony and weighed the evidence with respect to these alleged mitigators and obviously found that they came up lacking in light of the jury's 10 to 2 vote for recommending the death penalty. This Court must, of course, conduct its own evaluation of whether the defense has established these mitigators, and if so, what weight to give them. The State respectfully suggests that if this Court decides that the mitigators have been established, that at most this Court give them "some" weight.

With respect to the remaining "mitigators" (numbers 3 through12, 15 through 18, and 20 through 23), the State does not contest that the defense established that there is a factual basis for each of said "mitigators", however, we submit that this Court should give each such mitigator "little" or "no" weight. The defendant's age at the time of the commission of the murder (22) - especially having had prior experience in the criminal justice system as an adult wherein he had been offered the opportunity to be placed on probation and to steer away from a life of crime - offers little support for any leniency. Likewise, the defendant's voluntary drug abuse and

polysubstance dependence should not encourage a sympathetic attitude, particularly where, as here, at the very time he was engaging in such behavior he was supposed to be on probation but had willfully absconded from supervision in order to engage in the criminal lifestyle that he chose.

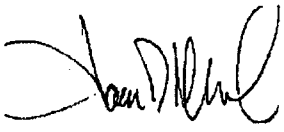
CONCLUSION

Finally, regardless of what "mitigators" this Court determines the defense to have established, and whatever weight this Court assigns to each mitigator, it is respectfully suggested that the "aggravators" established by the State far outweigh the mitigators that have been established. For the foregoing reasons, the State asks that this Court give the jury's recommendation "great weight" – which it must – and follow the jury's recommendation and impose a sentence of death upon the defendant for the First Degree Premeditated Murder Of Deputy Barbara Pill, A Law Enforcement Officer.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by **E-MAIL** to OFFICE OF THE PUBLIC DEFENDER - FELONY, Attorney for Defendant, at BREVARDFELONY@PD18.NET this 18th day of June, 2014.

PHIL ARCHER
STATE ATTORNEY

BY: 

JAMES D. MCMASTER
ASSISTANT STATE ATTORNEY
FLORIDA BAR NO. 220061
2725 JUDGE FRAN JAMIESON WAY, BLDG D
VIERA, FL 32940
(321) 617-7510 EXT: 56043
Eservice: BrevFelony@sa18.org

cc: Honorable Morgan Laur Reinman