Electronically Filed 11/08/2013 02:40:03 PM ET

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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.
_____/

DEMAND FOR DISCLOSURE OF FAVORABLE EVIDENCE

The Defendant, BRANDON LEE BRADLEY, moves this Court to enter its order directing the State to disclose to the Defendant all evidence favorable to the Defendant that now or in the future is possessed or controlled by the State of Florida and its agents, specifically including but not limited to the following information:

1. All material information in the State's possession or control (constructive or actual) that tends to negate the Defendant's guilt of any crime for which he has been convicted.

2. All material evidence or information in the State's possession or control (constructive or actual) that may reasonably be considered admissible and useful to the defense in the sense that it is probably material and exculpatory regardless of whether such information is deemed to be the work product of the prosecutor or otherwise subject to discovery as a public record.

3. All evidence in the actual or constructive possession of the State that is favorable to the Defendant and material to the issue of guilt or punishment in this case, specifically including but not limited to the following material:

A. All information that can be used to mitigate any alleged prior violent felonies which the State may seek to introduce as an aggravating circumstance in the sentencing phase regarding the homicide of Deputy Barbara Pill.

B. Any oral, written or recorded statements made by any person(s) to the police, to the State Attorney, or to the Grand Jury that tends to establish the innocence or mitigate the punishment of the Defendant, or that tends to impeach the credibility or contradict the testimony of any witness whom the State will call during this case.

C. Any reports made to the police that tend to establish the innocence or mitigate the punishment of the Defendant, or tend to impeach the credibility or contradict the testimony of any witness whom the State will call as a witness during this case.

D. The names and addresses of witnesses who might establish the innocence or mitigate the punishment of the Defendant, or impeach the credibility or contradict the testimony of any witness whom the State calls as a witness during this case.

E. Any information or material that tends to establish the innocence or mitigate the punishment of the Defendant, or impeach the credibility or contradict the testimony of any witness whom the State calls as a witness in this case.

F. Section 921.141(6), Florida Statute, lists considerations that, as a matter of law, are mitigating considerations that should be weighed in opposition of imposition of the death penalty. The statute includes "The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty." Section 921.141(6)(h), Florida Statutes.

G. The Florida Supreme Court and the United States Supreme Court have both ruled that the mitigating considerations that may justify a life sentence in a capital murder case cannot

be arbitrarily limited by statute. See **Lockett v. Ohio**, 438 U.S. 586 (1978); **Hitchcock v. Dugger**, 481 U.S. 393 (1987); **Cooper v. Dugger**, 526 So.2d 900 (Fla. 1988).

H. Even without this specific request, the Office of the State Attorney, having been given great resources by the Legislature to investigate and prepare cases and being charged with the responsibility of seeking justice through fairness under the law, has a duty as a matter of fundamental fairness, Due Process, Equal Protection and professional ethics to disclose mitigating evidence that its agents have discovered during the course of its investigation. See **Berger v. State**, 295 U.S. 78, 88 (1935) ("It is as much [the prosecutor's] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.").

I. The Office of the State Attorney is required by the Rules of Criminal Procedure, heightened standards of Due Process and professional ethical considerations to reveal all favorable evidence, known to the State, to the Defendant prior to trial.

J. Any scientific or medical report that tends to establish the innocence or mitigate the punishment of the Defendant, or to impeach the credibility or contradict the testimony of any witness whom the State calls as a witness during this case.

K. The substance of any and all statements, agreements, offers or discussions had with any of the State's witnesses, including any suggestion of lenience, compensation, assurance not to prosecute, assurance to proceed only on certain causes, or suggestion of any other benefit accruing to said individual whatsoever in exchange for their cooperation, assistance of testimony in the case herein;

L. The substance of any and all consideration or promise(s) of consideration given to or made on behalf of government witnesses. By "consideration," the Defendant refers to anything of value or use including but not limited to money, immunity grants, witness fees, special witness fees, transportation assistance, assistance or favorable treatment with respect to any criminal, civil, tax court, or administrative dispute, and anything else which could arguably create an interest, incentive or bias in the witness in favor of the State or against the defense or that could reasonably act as an inducement to testify or to color testimony;

M. Any and all prosecutions, investigations or possible prosecutions pending or which could be brought against any witness that testifies for the State in this case, and any probationary, parole or deferred prosecution status of any State witness;

N. All records and material information revealing felony convictions attributed to State witnesses.

MEMORANDUM OF LAW – STATEMENT OF MATERIAL FACTS:

The State of Florida filed notice under Florida Rule of Criminal Procedure 3.202 that it is seeking imposition of the death penalty in this case. Defendants are eligible for the death penalty in Florida only if they have committed first-degree murder under §782.04, Fla. Stat., only if there are "sufficient aggravating circumstances" listed in §921.141(5), Fla. Stat., that exist beyond a reasonable doubt, and only if that aggravation is not outweighed by "sufficient mitigating circumstances." §921.141(2) & (3), Fla. Stat.

The process of imposing capital punishment ultimately depends on weighing statutory aggravating circumstances against mitigating circumstances. **State v. Dixon**, 283 So.2d 1 (Fla. 1973). In that regard, the judge and jury may consider the evidence and testimony presented at trial and the penalty phase. Thus, the information that is required to enable defense counsel to

investigate, to present a meaningful defense and to confront accusers under the Fifth, Sixth and Fourteenth Amendments and article I, sections 2, 9, 16 and 22 of the Florida Constitution is dependent on timely receipt of relevant information pertaining to the moral and legal culpability of the Defendant. Disclosure by the State of information relevant and material this Defendant's guilt and/or to mitigate his punishment is required by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and article I, sections 2, 9, 16, 17 and 22 of the Florida Constitution.

The Defendant hereby makes an express demand for information that must be disclosed by the government – a mandatory requirement that is now firmly established and widely recognized:

> As long ago as *Mooney v. Holohan*, 294 U.S. 103, 112, 55 S.Ct. 340, 342, 79 L.Ed. 791 (1935), this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice." This was reaffirmed in *Pyle v. Kansas*, 317 U.S. 213, 63 S.Ct. 177, 87 L.Ed 214 (1942). In *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959), we said, "(t)he same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." *Id*, at 269, 79 S.Ct., at 1177. Thereafter *Brady v. Maryland*, 373 U.S., at 87, 83 SCt., at 1197, held that suppression of material evidence justifies a new trial "irrespective of the good faith or bad faith of the prosecution." See American Bar Association, Project on Standards for Criminal Justice, Prosecution Function and the Defense Function s 3.11(a). When the "reliability of a given witness may well be determinative of guilt or innocence," nondisclosure of evidence affecting credibility falls within this general rule. *Napue*, supra, at 269, 79 S.Ct., at 1177. We do not, however, automatically require a new trial whenever "a combing of the prosecutors' files after the trial has disclosed evidence possibly useful to the defense but not likely to have changed the verdict..." *United States v. Keogh*, 391 F.2d 138, 148 (CA2 1968). A finding of materiality of the evidence is required under *Brady*, *supra*, at 87, 83 S.Ct., at 1196, 10 L.Ed.2d 215. A new trial is required if "the false testimony could . . . in any reasonable

> likelihood have affected the judgment of the jury." *Napue*, *supra*, at 271, 79 S.Ct. at 1178.

Giglio v. United States, 405 U.S. 150, 153-154 (1972). See **Strickler v. Greene**, 527 U.S. 263, 281-282 (1999) (prosecutor's failure to disclose exculpatory information contained within police files violated due process clause of Fourteenth Amendment); **Kyles v. Whitley**, 514 U.S. 419 (1995) (prosecutor's failure to disclose impeachment information known to prosecutor violated due process clause of Fourteenth Amendment); **Brady v. Maryland**, 373 U.S. 83, 86 (1963) (prosecutor's suppression of co-defendant's confession violated due process clause of Fourteenth Amendment); **Napue v. Illinois**, 360 U.S. 264, 269-270 (1959) (prosecutor's failure to correct false testimony of witness that no leniency was promised by the government in return for his testimony violated due process clause of the Fourteenth Amendment).

Some Florida prosecutors *openly* ignore ethical requirements by engaging in the concealment of information favorable to the accused while prosecuting capital cases despite repeated admonishments from the Florida Supreme Court:

> We do not find the misconduct here to be so outrageous as to taint the validity of the jury's recommendation in light of the evidence of aggravation presented. Nonetheless, we are deeply distrubed [sic] as a Court by the continuing violations of prosecutorial duty, propriety and restraint. **We have recently addressed incidents of prosecutorial misconduct in several death penalty cases.** *Bush v. State*, 461 So.2d 936, 942 (Fla. 1984) (Ehrlich, J., specially concurring), *Jennings; Teffeteller v. State.* As a Court, we are constitutionally charged not only with appellate review but also "to regulate ... the discipline of persons admitted" to the practice of law. Art. V, § 15, Fla. Const. This Court considers this sort of prosecutorial misconduct, in the face of repeated admonitions against such overreaching, to be grounds for appropriate disciplinary proceedings. It ill becomes those who represent the state in the application of its lawful penalties to *themselves* ignore the precepts of their profession and their office. Nor may we encourage them to believe that so long as their misconduct can be characterized as "harmless error," it will be without repercussion.

> However, it is appropriate that individual professional misconduct not be punished at the citizens' expense, by reversal and mistrial, but at the attorney's expense, by professional sanction.

Bertolotti v. State, 476 So.2d 130, 133-134 (Fla.1985) (Emphasis in original). The admonishment given in **Bertolotti** is typical of others that followed, but they have done little to prevent prosecutors from far exceeding the bounds of ethical conduct:

> The present case is precisely the scenario we feared in Hill [v. State, 477 So.2d 553 (Fla. 1985)] – a bitterly contested swearing match between competing witnesses, including eyewitnesses on both sides, where a defendant's life hangs in the balance.
>
> **In spite of our admonishment in Hill and despite subsequent warnings that prosecutorial misconduct will be subject to disciplinary proceedings of The Florida Bar, we nevertheless continue to encounter this problem with unacceptable frequency.** The present case follows on the heels of another misconduct case and is one of the worst examples we have encountered. The conduct of prosecutors Cox and Goudie was both egregious and inexcusable. The prosecutors crossed the line of zealous advocacy by a wide margin and compromised the integrity of the proceeding."

Ruiz v. State, 743 So.2d 1, 9-10 (Fla. 1999) (Footnotes omitted).

Florida prosecutors have a long history of *secretly* engaging in improper conduct during the prosecution of capital cases by coaching state witnesses, e.g., **Rogers v. State**, 782 So.2d 373, 378 (Fla. 2001), withholding material criminal investigation reports of co-defendants who are key witnesses in the State's case, e.g., **Cardona v. State**, 826 So.2d 968, 981 (Fla. 2002) ("When a particular witness is crucial to the State's case, evidence of coaching is especially material to that witness's credibility."), failing to disclose a witness who comes forward with relevant testimony helpful to the defense during trial, e.g., **State v. Huggins**, 788 So.2d 238, 244 (Fla. 2001) (suppressing of potentially helpful testimony resulted in a jury verdict not worthy of confidence), failing to disclose crucial information that would be helpful in cross-examining a

key State witness, e.g., **Mordenti v. State**, 894 So.2d 161 (Fla. 2004) (prosecutor withheld witness's date book as well as crucial information obtained during the State's interview with a key witness); and, even failing to disclose *eye-witnesses* to a crime who gave different accounts than other witnesses whose names were provided. E.g., **Floyd v. Sate**, 902 So.2d 775 (Fla. 2005). See also, **Giles v. Maryland**, 386 U.S. 66 (1967); **Napue v. Illinois**, 360 U.S. 264 (1959); **Giglio v. United States**, 405 U.S. 150 (1972); **Ashley v. Texas**, 319 F.2d 80 (5th Cir.), *cert. denied*, 375 U.S. 931 (1963); **State v. Gillespie**, 227 So.2d 550 (Fla. 2d DCA 1969); **State v. Crawford**, 257 So.2d 898 (Fla. 1972); **Matera v. State**, 254 So.2d 843 (Fla. 3d DCA 1971); **Hernandez v. State**, 348 So.2d 1224 (Fla. 3d DCA 1977); and **Antone v. State**, 355 So.2d 777 (Fla. 1978). The prosecution is hereby put on notice that the information here requested must be disclosed.

It is clear that, in the context of imposition of capital punishment, the presentation of evidence that diminishes the weight of an aggravating circumstance is an integral component of the right to effective assistance of counsel and a reliable sentencing determination:

> With every effort to view the facts as a defense lawyer would have done at the time, it is difficult to see how counsel could have failed to realize that without examining the readily available file they were seriously compromising their opportunity to respond to a case for aggravation. *The prosecution was going to use the dramatic facts of a similar prior offense, and Rompilla's counsel had a duty to make all reasonable efforts to learn what they could about the offense. Reasonable efforts certainly included obtaining the Commonwealth's own readily available file on the prior conviction to learn what the Commonwealth knew about the crime, to discover any mitigating evidence the Commonwealth would downplay and to anticipate the details of the aggravating evidence the Commonwealth would emphasize*. Without making reasonable efforts to review the file, defense counsel could have had no hope of knowing whether the prosecution was quoting selectively from the transcript, or whether there were circumstances extenuating the behavior described by the victim.

Rompilla v. Beard, 545 U.S.374. 125 S.Ct. 2456, 2465 (2005) (Emphasis added). In **Rompilla**, the Court recognized that there is a duty of defense counsel to obtain information of prior crimes committed by the defendant in order effectively "downplay" the aggravation if possible. Therefore, this Demand specifically requests that the State disclose all information that tends to mitigate the homicide Deputy Barbara Pill.

WHEREFORE, a specific demand for the above-stated information and the disclosure of this information is constitutionally compelled as a matter of due process, fundamental fairness, the right to a fair trial and an "acute need for reliable fact finding" under article I, sections 2, 9, 16, 17 and 22 of the Florida Constitution and Amendments V, VI, VIII and XIV of the United States Constitution.

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 8 day of November, 2013.

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