

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 TO PRECLUDE CAPITAL PUNISHMENT AS A POSSIBLE SENTENCE

The Defendant, BRANDON LEE BRADLEY, pursuant to article I, sections 2, 9, 16, 17, 22 and 23 of the Florida Constitution and the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution, moves this Court to enter its order establishing that capital punishment is not a possible sentence in this case under the state and federal constitutions based on the following:

1. The Defendant has been indicted for one count of first-degree premeditated murder.
2. Following the filing of the Indictment, the State filed notice under Rule 3.202, Fla.R.Crim.P., that it seeks imposition of the death penalty.
3. In Florida, capital punishment cannot be imposed in the absence of "sufficient aggravating circumstances" pursuant to § 921.141, Florida Statute. See *Buckner v. State*, 714

So.2d 384, 390 (Fla. 1998). See also Elam v. State, 636 So.2d 1312 (Fla. 1994); Thompson v. State, 565 So.2d 1311 (Fla. 1990); Banda v. State, 536 So.2d 221 (Fla. 1988); State v. Dixon, 283 So.2d 1 (Fla. 1973).

4. Art. I, § 15(a), Fla. Const., requires that capital crimes be charged exclusively by indictment, and Floridian's have a property, liberty and life interest in being properly charged with crimes in accordance with the power and rights conferred by the Constitution of the State of Florida.

5. This Indictment fails to allege the commission of a capital crime because: a) the grand jury charge concerning the crime of first-degree premeditated murder fails to allege the existence of "sufficient aggravating circumstances" under § 921.141(5), Fla. Stat.; b) the grand jury charge concerning the crime of first-degree premeditated murder fails to allege that sufficient statutory aggravating circumstance set forth in § 921.141(5), Fla. Stat., exist to justify imposition of capital punishment pursuant to §921.141(3), Fla. Stat., and; c) Count I of the Indictment expressly alleges solely the commission of a first-degree premeditated murder, a violation of § 782.04(1)(a)(1), and nothing more. As set forth above, in Florida, capital punishment cannot be imposed in the absence of the existence of statutory aggravating circumstances. The commission of a premeditated murder, without more, is not a capital crime in Florida. See Jackson v. State, 648 So.2d 85, 89 (Fla. 1984); Rogers v. State, 511 So.2d 526, 533 (Fla. 1987). Because Aggravating circumstances are elements of Capital murder, failure to allege aggravating circumstances in the indictment violates the holdings of Apprendi v. New Jersey, 530 U.S. 466 (2000) and Ring v. Arizona, 536 U.S. 584 (2002). The undersigned Counsel is aware of the rulings to the contrary by the Florida Supreme Court regarding the

Accused's motion, in Parker v. State, 904 So.2d, 370, 382 (Fla. 2005) and Blackwelder v. State, 851 So.2d 650, 654 (Fla. 2003).

6. Imposition of capital punishment where the charging document fails to charge the commission of a capital crime and fails to adequately identify the essential elements of the crime to be punished denies notice, violates Due Process and fails to accommodate the fundamental right to grand jury indictment under the Fifth and Fourteenth Amendments to the United States Constitution and article I, sections 2, 9, 15(a), and 16 of the Florida Constitution.

7. Imposition of capital punishment where the charging document wholly fails to charge a capital crime and fails to provide adequate notice and a meaningful opportunity to defend against the sentence is arbitrary, capricious and it leads to unreliable imposition of capital punishment in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and article I, sections 2, 9, 15(a), 16 and 17 of the Florida 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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