

IN THE SUPREME COURT OF FLORIDA

BRANDON LEE BRADLEY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. SC14-1412

**ON APPEAL FROM THE CIRCUIT COURT
OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA**

ANSWER BRIEF OF APPELLEE

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TABLE OF CONTENTS

	PAGE#
TABLE OF CONTENTS.....	ii
TABLE OF CITATIONS	iv
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS	2
SUMMARY OF ARGUMENT	45
ARGUMENT	47
POINT ONE: THE TRIAL COURT WAS CORRECT IN DENYING A MISTRIAL BECAUSE THE STATE’S PENALTY PHASE CLOSING ARGUMENT DID NOT VITIATE THE ENTIRE TRIAL.....	47
POINT TWO: THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN LIMITING THE VOIR DIRE OF THE VENIRE PANEL CONCERNING DEFENDANT’S PRIOR VIOLENT FELONY CONVICTION AND THE FACT THAT HE WAS FLEEING AND ELUDING FROM A ROBBERY WHILE ON PROBATION	53
POINT THREE: THE TRIAL COURT PROPERLY ALLOWED AMANDA OZBURN’S TESTIMONY.....	61
POINT FOUR: THE TRIAL COURT PROPERLY DENIED APPELLANT’S MOTION FOR MISTRIAL BASED ON APPELLANT’S PROBATION OFFICER’S TESTIMONY	70
POINT FIVE: THE TRIAL COURT PROPERLY INSTRUCTED THE JURY ON THE AGGRAVATING FACTORS.....	75
POINT SIX: THE TRIAL COURT PROPERLY WEIGHED THE AGGRAVATING AND MITIGATING FACTORS.....	79

POINT SEVEN: THE TRIAL COURT PROPERLY DENIED APPELLANT’S <i>RING</i> CLAIM AND HE IS NOT ENTITLED TO A STAY BASED ON <i>HURST</i>	84
POINT EIGHT: THE TRIAL COURT PROPERLY INSTRUCTED THE JURY ON ITS ADVISORY ROLE	89
POINT NINE: THE DEATH PENALTY IS PROPORTIONATE WHEN COMPARED WITH SIMILAR CASES	91
SUFFICIENCY OF THE EVIDENCE	98
CONCLUSION	99
CERTIFICATE OF SERVICE	100
CERTIFICATE OF COMPLIANCE.....	100

TABLE OF CITATIONS

CASES

<i>Abdool v. State</i> , 53 So. 3d 208 (Fla. 2010).....	87
<i>Aguirre-Jarquin v. State</i> , 9 So. 3d 593 (Fla. 2009).....	86
<i>Allen v. State</i> , 137 So. 3d 946 (Fla. 2013).....	80, 92
<i>Altersberger v. State</i> , 103 So. 3d 122 (Fla. 2012).....	96, 97
<i>Armstrong v. State</i> , 642 So. 2d 730 (Fla. 1994),.....	77, 78, 79
<i>Ault v. State</i> , 53 So. 3d 175 (Fla. 2010).....	passim
<i>Barrett v. State</i> , 649 So. 2d 219 (Fla. 1994).....	72
<i>Bearden v. State</i> , 161 So. 3d 1257 (Fla. 2015).....	64, 65, 66
<i>Bottoson v. Moore</i> , 833 So. 2d 693 (Fla. 2002).....	87
<i>Bright v. State</i> , 90 So. 3d 249 (Fla.), cert. denied, 133 S. Ct. 300, 184 L.Ed. 2d 177 (2012)	47, 49
<i>Brooks v. State</i> , 918 So. 2d 181 (Fla. 2005).....	67
<i>Brown v. State</i> , 126 So. 3d 211 (Fla. 2013), cert. denied, 134 S. Ct. 2141, 188 L. Ed. 2d 1130 (2014)	90
<i>Bryant v. State</i> , 901 So. 2d 810 (Fla. 2005).....	87, 88

<i>Burns v. State</i> , 699 So. 2d 646 (Fla. 1997).....	95
<i>Caldwell v. Mississippi</i> , 472 U.S. 320, 105 S. Ct. 2633, 86 L.Ed.2d 231 (1985).....	89
<i>Calhoun v. State</i> , 138 So. 3d 350 (Fla. 2013), cert. denied, 135 S. Ct. 236, 190 L. Ed. 2d 177 (2014)	91, 92
<i>Campbell v. State</i> , 571 So. 2d 415 (Fla. 1990).....	79
<i>Campbell v. State</i> , 679 So. 2d 720 (Fla. 1996).....	52, 53
<i>Cannon v. State</i> , 40 Fla. L. Weekly S509 (Fla. Sept. 24, 2015)	75, 77
<i>Castro v. State</i> , 597 So. 2d 259 (Fla. 1992).....	76, 77
<i>Coday v. State</i> , 946 So. 2d 988 (Fla. 2006).....	55, 56, 89
<i>Connor v. State</i> , 803 So. 2d 598 (Fla. 2001).....	67
<i>Connors v. United States</i> , 158 U.S. 408, 15 S. Ct. 951, 39 L.Ed. 1033 (1895).....	56
<i>Davis v. State</i> , 136 So. 3d 1169 (Fla. 2014).....	50
<i>Davis v. State</i> , 698 So. 2d 1182 (Fla. 1997).....	55
<i>Dennis v. State</i> , 817 So. 2d 741 (Fla. 2002).....	passim
<i>Dessaure v. State</i> , 891 So. 2d 455 (Fla. 2004).....	50

<i>Dewolfe v. State</i> , 62 So. 3d 1142 (Fla. 1st DCA 2011)	65
<i>Diaz v. State</i> , 860 So. 2d 960 (Fla. 2003).....	97
<i>Ellington v. State</i> , 292 Ga. 109, 735 S.E.2d 736 (2012).....	58, 59
<i>Escobar v. State</i> , 699 So. 2d 988 (Fla. 1997).....	67
<i>Evans v. Sec'y, Florida Dep't of Corr.</i> , 699 F.3d 1249 (11th Cir. 2012)	86
<i>Felton v. State</i> , 120 So. 3d 126 (Fla. 4th DCA 2013).....	68
<i>Floyd v. State</i> , 913 So. 2d 564 (Fla. 2005).....	49
<i>Ford v. State</i> , 802 So. 2d 1121 (Fla. 2001).....	80, 92
<i>Garron v. State</i> , 528 So. 2d 353 (Fla. 1988).....	50, 51
<i>Gen. Elec. Co. v. Joiner</i> , 522 U.S. 136, 118 S. Ct. 512, 139 L.Ed.2d 508 (1997).....	63, 64
<i>Geralds v. State</i> , 601 So. 2d. 1157 (Fla. 1992).....	74
<i>Gregory v. State</i> , 118 So. 3d 770 (Fla. 2013).....	99
<i>Grossman v. State</i> , 525 So. 2d 833 (Fla. 1988), <i>cert. denied</i> , 489 U.S. 1071, 109 S. Ct. 1354, 103 L.Ed.2d 822 (1989).....	78
<i>Hall v. State</i> , 87 So. 3d 667 (Fla. 2012), <i>cert. denied</i> , 133 S. Ct. 537, 184 L.Ed.2d 352 (2012).....	87, 88

<i>Hamilton v. State</i> , 875 So. 2d 586 (Fla. 2004).....	87, 88
<i>Hernandez v. State</i> , 31 So. 3d 873 (Fla. 4th DCA 2010)	68
<i>Hudson v. State</i> , 992 So. 2d 96 (Fla. 2008).....	89
<i>Hurst v. Florida</i> , 135 S. Ct. 1531, 191 L.Ed.2d 558 (2015).....	84
<i>J.B. v. State</i> , 705 So. 2d 1376 (Fla. 1998).....	72
<i>Jackson v. State</i> , 127 So. 3d 447 (Fla. 2013).....	87
<i>Jackson v. State</i> , 451 So. 2d 458 (Fla. 1984).....	63, 72, 73
<i>Jackson v. State</i> , 498 So. 2d 406 (Fla. 1986).....	67
<i>Johnson v. State</i> , 608 So. 2d 4 (Fla. 1992).....	56
<i>Johnson v. State</i> , 903 So. 2d 888 (Fla. 2005).....	57, 58
<i>Johnston v. State</i> , 863 So. 2d 271 (Fla. 2003).....	87, 88
<i>Jones v. State</i> , 963 So. 2d 180 (Fla. 2007).....	98
<i>Jordan v. State</i> , 176 So. 3d 920 (Fla. 2015).....	71, 73
<i>Kearse v. State</i> , 770 So. 2d 1119 (Fla. 2000).....	80, 95

<i>King v. Moore</i> , 831 So. 2d 143 (Fla. 2002).....	87
<i>Mackiewicz v. State</i> , 114 So. 2d 684 (Fla. 1959), <i>cert. denied</i> , 362 U.S. 965, 80 S. Ct. 883, 4 L.Ed.2d 879 (1960).....	78
<i>Mansfield v. State</i> , 758 So. 2d 636 (Fla. 2000).....	80
<i>Merck v. State</i> , 975 So. 2d 1054 (Fla. 2007).....	48
<i>Miranda v. Arizona</i> , 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694 (1966).....	19, 26
<i>Morton v State</i> , 689 So. 2d 259 (Fla. 1997).....	64
<i>Mu'Min v. Virginia</i> , 500 U.S. 415, 111 S. Ct. 1899, 114 L. Ed. 2d 493 (1991).....	57
<i>Oyola v. State</i> , 99 So. 2d 431 (Fla. 2012).....	81, 83
<i>Patrick v. State</i> , 104 So. 3d 1046 (Fla. 2012), <i>cert. denied</i> , 134 S. Ct. 85, 187 L.Ed.2d 65 (2013).....	48, 90
<i>Phillips v. State</i> , 39 So. 3d 296 (Fla. 2010).....	90
<i>Pietri v. State</i> , 644 So. 2d 1347 (Fla. 1994).....	56
<i>Reaves v. State</i> , 639 So. 2d 1 (Fla. 1994).....	95
<i>Reaves v. State</i> , 826 So. 2d 932 (Fla. 2002).....	58
<i>Rigterink v. State</i> , 66 So. 3d 866 (Fla. 2011).....	90

<i>Ring v. Arizona</i> , 536 U.S. 584, 122 S. Ct. 2428, 153 L.Ed.2d 556 (2002).....	85, 86, 87, 88
<i>Ritter v. Smith</i> , 811 F.2d 1398 (11th Cir. 1987)	85
<i>Robinson v. State</i> , 865 So. 2d 1259 (Fla. 2004).....	87, 88
<i>Rodgers v. State</i> , 948 So. 2d 655 (Fla. 2006).....	80, 92
<i>Rodriguez v. State</i> , 753 So. 2d 29 (Fla. 2000).....	69
<i>Rodriquez v. State</i> , 842 So. 2d 1053 (Fla. 3rd DCA 2003).....	74
<i>Ruff v. State</i> , 31 So. 3d 833 (Fla. 4th DCA 2010).....	68
<i>Salazar v. State</i> , 991 So. 2d 364 (Fla. 2008).....	49
<i>Senterfitt v. State</i> , 837 So. 2d 599 (Fla. 1st DCA 2003)	69
<i>Simmons v. State</i> , 934 So. 2d 1100 (Fla. 2006).....	98
<i>Sims v. State</i> , 681 So. 2d 1112 (Fla. 1996).....	78, 79
<i>Snelgrove v. State</i> , 107 So. 3d 242 (Fla. 2012).....	89
<i>Spencer v. State</i> , 615 So. 2d 688 (Fla. 1993).....	2
<i>State v. Clark</i> , 981 S.W. 2d 143 (Mo. 1998)	58

<i>State v. DiGuilio</i> , 491 So. 2d 1129 (Fla. 1986).....	53, 84
<i>State v. Emmund</i> , 698 So. 2d 1318 (Fla. 3rd DCA 1997).....	74
<i>State v. Jackson</i> , 107 Ohio St. 3rd 53 (Ohio 2005)	58
<i>State v. Jackson</i> , 836 N.E.2d 1173 (2005).....	60
<i>State v. Jones</i> , 867 So. 2d 398 (Fla. 2004).....	49, 86
<i>State v. Richards</i> , 843 So. 2d 962 (Fla. 3rd DCA 2003).....	66
<i>State v. Steele</i> , 921 So. 2d 538 (Fla. 2005).....	85, 86
<i>State v. Sturdivant</i> , 94 So. 3d 434 (Fla.2012).....	67
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984).....	57
<i>Teffeteller v. Dugger</i> , 734 So. 2d 1009 (Fla. 1999).....	56
<i>Trease v. State</i> , 768 So. 2d 1050 (Fla. 2000).....	79, 80
<i>Turner v. Murray</i> , 476 U.S. 28, 106 S. Ct. 1683, 90 L.Ed.2d 27 (1986).....	58
<i>United States v. Young</i> , 470 U.S. 1, 105 S. Ct. 1038, 84 L.Ed.2d 1 (1985).....	50
<i>Wade v. State</i> , 156 So. 3d 1004 (Fla. 2014).....	66

<i>Wade v. State</i> , 41 So. 3d 857 (Fla. 2010).....	49
<i>Wheeler v. State</i> , 4 So. 3d 599 (Fla. 2009).....	91, 95
<i>Williams v. State</i> , 110 So. 2d 654 (1959).....	72
<i>Williams v. State</i> , 619 So. 2d 487 (Fla. 1st DCA 1993)	73
<i>Yacob v. State</i> , 136 So. 3d 539 (Fla. 2014).....	91
OTHER AUTHORITIES	
<i>Fla. R. App. P.</i> 9.142(a)(5).....	98
<i>Fla. R. App. P.</i> 9.210(c)	1
<i>Fla. Std. Jury Instr. (Crim.)</i> 7.11	77

PRELIMINARY STATEMENT

This brief will refer to Appellant as such, Defendant, or by proper name, e.g., "Bradley." Appellee, the State of Florida, was the prosecution below; the brief will refer to Appellee as such, the prosecution, or the State. Unless the contrary is indicated, bold-typeface emphasis is supplied; cases cited in the text of this brief and not within quotations are italicized; other emphases are contained within the original quotations.

STATEMENT OF THE CASE AND FACTS

As authorized by *Fla. R. App. P.* 9.210(c), the State submits its rendition of the case and facts.

STATEMENT OF THE CASE

On April 3, 2012, Brandon Lee Bradley was indicted by the grand jury of Brevard County, Florida, for the March 6, 2012, murder of Deputy Barbara Pill. (V2, R371-73).¹ Following various pre-trial proceedings, Bradley's trial began on March 18, 2014. On April 1, 2014, the jury found Bradley guilty of the following: Count One – First Degree Murder; Count Two – Robbery; Count Three –Fleeing or Attempting to Elude a law Enforcement Officer; and Count Four – Resisting an Officer with Violence. (V2, R371-73; V33, R2070-71). The case proceeded to the penalty phase with respect to the capital conviction. On April 8, 2014, the jury

¹ Cites to the record are by volume number, "V_" followed by "R_" for the page number.

returned an advisory sentence of death by a vote of ten to two (10-2) for the murder of Deputy Pill. (V37, R2848). A *Spencer*² hearing was held on June 5, 2014. (V37, R2860-76). The trial court imposed a sentence of death on June 27, 2014. (V9, R1656-97; V37, R2889). Notice of appeal was filed on July 11, 2014. (V9, R1700). After several record supplementations, Bradley filed his *Initial Brief* on October 27, 2015.

STATEMENT OF THE FACTS

The State relies on the following facts from the evidence and testimony presented at trial.

Events leading up to the murder Outstanding Warrants

Charles Colon

Charles Colon was Bradley's probation officer in 2010. On February 9, 2011, arrest warrants were issued for Bradley after he violated probation on three cases. (V24, R224-25, 226, 232, V10, R1709-17, State Exhs. 1-3). Amended arrest warrants were issued in January 2012 because Bradley had additional charges pending against him. (V24, R234).

Theft of the murder weapon

James Seaton

James Seaton purchased a Glock model 27 handgun in July 2011. (V24, R250, 252). In November, he filed a report with the Brevard County Sheriff's

² *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

Office “BCSO” after the gun was stolen from his car’s glovebox. Seaton had been with Robert Marks the night before he noticed it was missing. (V24, R250-51). He eventually learned that Marks had stolen the Glock. (V24, R259).

Robert Marks

Robert Marks stole a firearm³ from James Seaton and eventually sold it to a black male named “Boogie.” (V24, R237, 239, 242). Subsequent to the sale, Marks was interviewed by Agent Craig Carson, BCSO, but he denied stealing the weapon. (V24, R243). After Deputy Pill’s murder, Marks was interviewed again at which time he provided Boogie’s phone number to Carson. (V4, R243, 244). Marks identified Bradley in a photo as the person he knew as “Boogie.” (V24, R247).

Agent Craig Carson

Agent Craig Carson works in the ATF division of the BCSO. In March 2012, he assisted in the investigation of Deputy Pill’s murder and the investigation of the recovered murder weapon. (V24, R260-61). Based on information Carson received from Seaton about his stolen firearm, Carson interviewed Marks. (V24, R261). Marks admitted he stole Seaton’s gun and sold it to Boogie. (V24, R262). Carson obtained a photograph of Bradley in which Marks identified Bradley as Boogie. (V24, R265, 271-72; V25, R428-29).

³ As a result of the theft, Marks was serving an eight-year sentence for armed burglary of a conveyance with a firearm, dealing in stolen property, and possession of a firearm by a convicted felon. (V24, R238).

Amanda Ozburn

Amanda Ozburn, Bradley's friend, saw him with a firearm about six months before Deputy Pill's murder. (V29, R1327-28). She identified the murder weapon as the firearm Bradley kept in his waistband. (V29, R1329, 1339). In December 2011, she and Bradley were driving together when numerous police cars passed by them. Bradley was "nervous." He told Ozburn he had outstanding arrest warrants issued for him. If he was stopped by police, or an attempt was made to take him into custody, Bradley said, "he would try to run." (V29, R1329-30, 1342). Ozburn and Bradley abused drugs together. Bradley was occasionally paranoid after abusing a large amount of drugs. (V29, R1339-40).

Theft of motel property

Christopher Montesano

Christopher Montesano and his fiancée were checking out of a Brevard County EconoLodge on March 6, 2012. (V24, R290). Montesano saw Bradley and a white female loading motel furnishings into an SUV parked next to him. (V24, R290-91, 294, 296, 299). Bradley went up and down the stairs several times carrying furnishings to his SUV. (V24, R302). Hotel personnel were unsuccessful in their attempt to stop Bradley in the parking lot. (V24, R297).

Andrew Jordan

Andrew Jordan worked at the EconoLodge on March 6, 2012. (V24, R303).

Bradley and Andria Kerchner⁴ checked into the motel on March 4 and checked out on March 6. (V24, R308). On March 6, Jordan saw Bradley get in the driver's seat of a white SUV that contained motel furnishings in the back of it. (V24, R311-12, 313R314, 341, 343, 348). As Jordan approached Bradley, Kerchner came down the motel stairs and got into the passenger seat. (V24, R315). Bradley appeared to be under the influence of "something." (V24, R344). Jordan asked Bradley several times to get out of the SUV and "get the stuff out and leave." Jordan called 911 when Bradley did not comply. (V24, R317, 318, 345). Bradley drove forward, "brushed" Jordan's right side, and drove off. (V24, R319, 346). The bed linens, dresser drawers, and furnishings were missing from Bradley's/Kerchner's motel room. (V24, R321-22, 329-31, State Exh. 32).

Vanessa McNerney

Vanessa McNerney was a housekeeper at the EconoLodge on March 6, 2012. (V24, R351). About 10:40 a.m., McNerney encountered Bradley at his motel room and noticed a nightstand by the motel door rather than between the beds. Bradley spoke in a normal tone although he appeared to be under the influence of either drugs or alcohol. (V24, R353-54, 370-71, 374). Bradley asked McNerney to return in thirty minutes to clean the room. (V24, R374). A short time later, Bradley was standing by his truck with the nightstand. A young, white female got into the

⁴ Co- Defendant Kerchner pled guilty to the following: 1) accessory after the fact; burglary of a dwelling; and grand theft, for which she was sentenced to 12 years. (V26, R676-77, 735).

passenger seat a few minutes later. (V24, R253, 355, 360). McNerney's co-worker instructed Bradley to give back the motel property. The passenger then tossed motel bedding and a picture out of the SUV's window. (V24, R355-56, 363-64). The motel owner called 911 after Bradley drove off. (V24, R361, 386, 389).

Tammy Brown

Tammy Brown worked at the EconoLodge. On March 6, 2012, she saw Bradley with a motel nightstand at the back of his SUV. (V24, R377). Bradley spoke clearly and told Brown the nightstand belonged to him. (V24, R379, 384). Motel bedding was inside Bradley's vehicle. (V24, R378). Brown went to Bradley's room and spoke to Kerchner. Kerchner appeared to be under the influence of drugs or alcohol. (V24, R380, 383). Kerchner got into the passenger side of Bradley's vehicle a few minutes later and tossed items out of the SUV. (V24, R379-80, 382).

Mohammad Malik

Mohammad Malik, EconoLodge owner, called 911 after he was notified that Bradley and Kerchner were taking motel items and loading them into Bradley's SUV. (V24, R386-87, 388, 397). The 911 call was published for the jury. (V24, R389; V25, R425-27). The stolen furnishings were in the back of a White Ford Bronco or Explorer. (V25, R425-26, 427). Bradley and Kerscher left the motel parking lot and drove east on SR192. (V25, R426).

The Shooting

Deputy James Troup

Deputy James Troup and Deputy Pill had worked together for several years.

(V25, R502, 503). On March 6, 2012, Troup was dispatched to the EconoLodge in response to a 911 call regarding stolen property. (V25, R503, 507-08). After receiving information from motel staff, Troup drove in the direction where Bradley was last seen driving away. Radio transmission indicated Deputy Pill was assisting. (V25, R510). Troup headed in Pill's direction after Pill reported that Bradley's vehicle had "just passed her." Traffic, however, was very congested. (V25, R513).

Troup did not initially do anything differently when Pill transmitted that she was pulling over Bradley's vehicle. Pill subsequently transmitted that Bradley would not pull over and "kept moving forward and opening and closing the door." Troup rushed to the scene. (V25, R518, 547). Pill was already laying in the road when Troup arrived. Her vehicle was the only vehicle in sight. (V25, R518). A neighbor advised Troup that a white SUV had just left the scene and drove northbound on nearby John Rodes Boulevard. Troup broadcast a description of the SUV and its direction of travel. (V25, R520). Emergency medical services were called. (V25, R521).

Andrea Ziarno

Andrea Ziarno, paramedic, assessed Deputy Pill's medical condition as "critical" at the shooting scene. Pill was immediately transported to Holmes Regional Medical Center. (V27, R890, 891).

Retrieval of in-car camera videos

Numerous law enforcement personnel were involved with obtaining the in-

car camera SD cards/videos⁵ from Deputies Troup and Pill's vehicles. (V25, R438-80). The recorded videos extracted from the SD cards were burned to DVDS. (V25, R481-83). Small video clips, "slow motion video," and still images were created from the in-car video obtained from Pill's car. (V26, R662-63, 664-65, State Exhs. 47, 48).

Deputy James Troup

Troup's in-car video recorded scenes from 30 seconds prior to turning on the patrol car's lights through the next two hours. Troup reviewed the in-car video that Pill's camera captured. The videos⁶ were dated and time-stamped. (V25, R521, 533, Exhs. 42, 43). A 10-minute portion (V25, R536-37) of the in-car video from Pill's car (State Exh. 42) was published for the jury. In pertinent part, the video revealed the following:

DEPUTY PILL: 170, it's going to be Elena Way and it's going be outside by the black male. Step out of the car. Come back here. Step out of the car. Step out of the car. Come back here. Come back to me. Come back to me. Now. Come back to me, I need to talk to you. (Unintelligible). Come back to me. Are you in the car by yourself? Are you in the car by yourself? Get out of the car. Come on now. Get

⁵ A video camera is placed into the rearview mirror of every patrol car. (V25, R443). The recording is started in one of three ways: 1) the record button on the rearview mirror; 2) a remote sensor on the officer; or 3) activation of the emergency lights on the patrol car. (V25, R443-44). A team of law enforcement personnel install the video equipment in the patrol cars. (V488-89). There is no way to alter the images captured by the camera. (V25, R494).

⁶ The video from Deputy Pill's patrol car was 1 hour, 7 1/2 minutes; the video from Troup's patrol car was 2 hours, 16 minutes. (V25, R536-37).

out of the car now. Come on, out of the car. Get out of the car. Get out of the car now. Get out of the car. Now. Sir, get out of the car so I can talk to you. Come out of the car. Come on, get out of the car. Get out of the car. Show me your hands. All right. Come on. I want to talk to you out here, come on. Get out of the car. Out. Sir, out of the car. Come out of the car now. Come on. Come on. Step out of the car. Put it in park. Put it in park. Park the car. I don't know why you wouldn't get out of the car. Come on.

MR. BRADLEY: Why you going to shoot me?

DEPUTY PILL: I'll tell you when you get out. Come on.

MR. BRADLEY: You gonna shoot me?

DEPUTY PILL: Sir, you turned around in the middle of the road, you hit (unintelligible), get out so I can talk to you. Come on. Let's go. No. No. No. Stop now. I'm telling you stop and get out of the car.

MR. BRADLEY: You gonna shoot me?

DEPUTY PILL: You're driving away, get out of the car now.

MR. BRADLEY: Why you going to shoot me?

DEPUTY PILL: Get out of car. Now. Get out of the car. Let's go. Come on.

UNIDENTIFIED SPEAKER: Oh my god. Oh my god. Oh my god. Oh my god.

(V25, R541-45).

Gunshot sounds were transmitted because Deputy Pill had activated sound on her radio via the button on her shirt. (V25, R548). A neighbor called 911 after she approached Pill and saw she had been shot. (V25, R546). Troup arrived about forty-five seconds later. (V25, R545). A 10-minute portion of the in-car video from Troup's patrol car was also published for the jury. (V25, R546, 549). He removed

Pill's weapon from her holster and placed it in his patrol car for safe keeping. (V25, R546-47). Medical personnel arrived soon after. (V25, R546).

Apprehension and Arrest

Agent Don Reynolds

Agent Don Reynolds, lead investigator, responded to the shooting scene. (V25, R551, 552). Personnel reported to various crimes scenes including the EconoLodge and a residence where Bradley was eventually located. (V25, R553). The EconoLodge, the shooting scene, and the home where Bradley initially hid were all in close proximity to each other. (V25, R564-66).

Co-Defendant Kerchner's cell phone was seized from the residence's garage where Bradley initially hid. (V25, R554-55, 559; V26, R690). Phone records revealed that Kerchner had made several calls to Jeffrey Dieguez on March 6, 2012, including a call that occurred at 10:48 a.m., and lasted for about 32 1/2 minutes. (V25, R559-60, 561, 570, 572-75). The videotape from Pill's in-car camera indicated Pill was shot between 11:11 and 11:13 a.m. (V25, R559-60, 571).

Jeffrey Dieguez

Jeffrey Dieguez knew Kerchner for about a year prior to March 2012. (V25, R577-78; V26, R628). On March 6, Dieguez and Kerchner were talking via cell phones when he overheard Kerchner arguing with Bradley.⁷ (V25, R579-80).

⁷ During a pre-trial deposition, Dieguez said he did not recognize the male voice he overheard on the phone, but during testimony identified the black male as her boyfriend. (V25, R580, 587).

Dieguez described the conversation in pertinent part:

A Okay. They were being pulled over -- she did mention they were being pulled over and the male which indicated that he wanted her to give her -- give him the gun so that he can shoot the police officer that was pulling him over because he said that the bitch had his tag number and saw his face and he had to kill this bitch.

Q Is that what he actually said?

A Yes.

Q And was it just one remark or did this go on for a period of time?

A This went on for a period of time.

Q What was Miss Kerchner's response when he said these things?

A She indicated that, and was pleading with him, that he didn't need to do this and was literally begging him not to do this and he continued to yell at her give me the fucking gun, give me the fucking gun, I'm going to kill this bitch because she had saw my face and has my tag number and I'm not going to prison.

Q How many times did that conversation go back and forth between Miss Kerchner and him?

A Well, when emotions like that run high you really don't know how long it took because at the time I wasn't thinking about time, I was just listening to the conversation that went on for a period of time and all I could really could literally hear her screaming baby, please stop, you don't need to do this, you don't need to do this. I mean, she repeatedly said that several, several times, you know, that she didn't want him to do this.

Q What happened next?

A I heard what to me was gunshots, pop, pop, pop and after I heard all

that then the phone conversation ended.
(V25, R580-82).

Dieguez never heard Pill tell Bradley to get out of his car. (V26, R628). He later learned that Kerchner had been involved in an officer-shooting when he arrived at Kerchner's sister's house 10 minutes after the phone call. (V25, R584-85).

Trista Lowman

Trista Lowman lives on the street where Pill was shot. On March 6, at about 11:00 a.m., she was returning home when she saw a white SUV had been pulled over near her home. Lowman drove around the police cruiser and pulled into her driveway. (V26, R648-49). As she passed by the SUV, Lowman noticed a black male in the driver's seat and a white female in the passenger seat. (V26, R650). Lowman heard Pill's voice getting louder as she told Bradley to get out of the SUV. (V26, R651). The vehicle then took a turn as if trying to "get out of the neighborhood" but Pill followed, walking along side the SUV and kept telling Bradley to get out of the car. (V26, R652, 654). Pill had her hand on her weapon. (V26, R655). Lowman crouched down by the side of her car after she heard gunshots. "I just kept hearing shot after shot."⁸ Lowman ran to Pill after the SUV made a U-turn and sped off toward John Rodes Boulevard. (V26, R652-53). She called 911. (V26, R653).

Deputy Victor Velez

⁸ Lowman heard four shots but she did not see who fired them. (V26, R655).

Deputy Victor Velez heard Pill's radio transmission that Bradley refused to exit his vehicle. Although Velez was aware that Deputy Troup was on his way to assist Pill, he cleared his call and also went to backup Pill. (V26, R657). Pill had already been shot and was laying in the road when Velez arrived at the scene. (V26, R660). Pill had a gunshot wound to her head. He immediately spoke with Trista Lowman and then issued a radio call relaying Bradley's vehicle information. (V26, R661).

Andria Kerchner

Co-Defendant Andria Kerchner knew Bradley since age 13 and started dating him about three weeks before the murder. (V26, R676-77, 678, 692). They abused drugs daily during that time—"sipped syrup which is a promethazine or codeine ... Xanax and smoke[d] weed." (V26, R693, 696-97).

Bradley usually kept a gun in his vest pocket or in the center console of his white SUV. (V26, R678, 679). On March 6, after Bradley and Kerchner spent the prior night at the EconLodge, they stole some of the motel furnishings—"anything that could be moved." Motel staff confronted them and said they were calling police. She claimed both she and Bradley were very impaired from drug use. (V26, R679-80, 681, 743, 751). Bradley said, "... we're not waiting for police" and drove off with Kerchner in the passenger seat. The SUV "swiped" one of the motel staff as they left the motel area. (V26, R682, 742, 744). Bradley did not want to go back to prison and said "he was going to do whatever he had to do not to have to go back to prison including ... shooting these crackers." (V26, R683, 745).

A police car passed their SUV shortly after they left the motel. (V26, R683).

Bradley said again that “if we were going to get pulled over he was not going back to prison and that he would shoot these ... crackers.” That meant “anything in uniform.” (V26, R684, 745). Shortly thereafter, Deputy Pill got behind them and turned on her lights. (V26, R684). Bradley eventually pulled over. (V26, R685). Kerchner “screamed” at Bradley not to shoot Pill. (V26, R732).

Pill directed both of them to get out of the SUV. (V26, R686). Bradley asked Pill several times if Pill was going to shoot him and “why are we being pulled over, why do I need to step out of the vehicle.” Pill did nothing that indicated she was going to shoot. Pill kept walking toward the SUV while she repeatedly ordered them out of the vehicle. (V26, R687, 733). As Pill got to the door of the SUV, Bradley had his gun in his hand. He shot Pill “five, six times.” (V26, R688, 691, 745-46). Kerchner told Bradley to drive off. (V26, R688, 742). Initially the duo drove through several streets and then hid in Gerald Weber’s garage.⁹ (V26, R688, 742). Bradley then drove the vehicle while police chased after them. (V26, R742). Their SUV eventually ended up in a ditch and they were subsequently arrested. (V26, R690, 742).

Gerald Weber

Gerald Weber was working at home on March 6 when he saw police in his backyard. He told officers he had not seen an SUV drive through his yard. (V26, R781-82). However, he alerted police after he found Kerchner hiding in his garage.

⁹ Weber did not know Bradley or Kerchner. (V26, R781,783).

He then saw Bradley drive away in a white SUV. (V26, R783-84). Officers did not find anyone else hiding in his house or on his property. (V26, R788). Officer Streiff collected a cell phone found in his garage that did not belong to him. (V26, R789).

Numerous police officers were involved with Bradley's apprehension and arrest. Stop sticks were set up in a strategic location. (V27, R834-35). Bradley made no efforts to stop his car. (V27, R868). Ultimately, the SUV ran over stop sticks and ended up in a ditch. (V27, R826). Bradley and Kerchner were the only occupants of the vehicle and were arrested. (V26, R779; V27, R828). Bradley was initially taken into custody by a Melbourne police officer. Bradley declined medical treatment. (V28, R1081, 1084, 1085). He was then transferred to the BCSO's custody and taken to the investigative unit building. (V28, R1088, 1089, 1091). Bradley said he was "okay" during the drive and did not have any difficulty walking into the building. (V28, R1093).

Processing the Crime Scenes and Evidence

Lisa Connors

Lisa Connors, CSI, assisted in processing the shooting scene. She took measurements, marked evidence, and prepared a formal diagram. (V27, R894, 897, State Exh. 63). Items marked included: three skull fragments, fragments of copper jacketing, pieces of sunglasses, piece of Pill's armored vest, bloodstained piece of clothing, and seven spent cartridge casings. (V27, R898-99, 927). She obtained a buccal swab from Bradley and administered a gun residue test. (V27, R899, 902).

Jennifer Miller

Jennifer Miller, CSI, assisted in processing Bradley's apprehension scene. (V27, R905-06). She took photographs, videotaped the scene, and prepared a sketch of the area with corresponding measurements. (V27, R906, 907, State Exh. 64). Photographed items found in Bradley's SUV included bedding and an air conditioner cover.¹⁰ A firearm and gun magazine were also found and photographed. (V27, R911, 913, 914, 934).

Stephanie Cooper

Stephanie Cooper was the lead CSI in charge of collecting and processing the evidence seized from the various crime scenes. (V27, R916-17, 927). She also collected a buccal swab from Co-Defendant Andria Kerchner but did not collect a blood or urine samples from either defendant. (V27, R918, 987). Several items of evidence were processed for DNA and fingerprints. (V27, R928-29). Cooper did not find any latent fingerprints of value on any of the casings. (V27, R933). She also processed the SUV for stains. (V27, R940). A blood stain was located on the inside part of the driver's door in the bottom corner. There was a bullet hole above the driver's arm rest. She collected a firearm-a forty caliber Smith and Wesson Glock model 27 semiautomatic pistol (State Exh. 124) that was sticking out of the console. (V27, R941, 942, 964, 971). A box of cartridges found in the vehicle contained the same caliber and type as the casings found at the shooting scene.

¹⁰ Items stolen from the Econolodge motel. See V24, R329-30.

(V27, R943-44, 965). A “friction ridge detail” was obtained from the plastic cartridge tray. (V27, R945, 965). Cooper also located two Econolodge room key slips—one was found in a red makeup bag in the backseat of the SUV and the other was found in a wallet laying inside the vehicle. (V27, R942, 946). A glass pipe, a piece of foil, and three small bags containing white residue and pills were also collected. (V27, R981-92, 983).

The firearm, casings, and projectiles found in the SUV were collected and swabbed for DNA. One of the projectiles was found in the driver’s front door. (V27, R953-56, 972-73). The firearm contained one live round in the weapon and one live round in a ten-shot magazine. (V27, R961). Eight cartridges were missing—the seven cartridge casings that were found at the shooting scene and the one cartridge found in the driver’s door. (V27, R961). Cooper attended Pill’s autopsy and collected projectiles and fragments removed from her body. (V27, R974-75).

Amy Siewert

Amy Siewert, FDLE crime lab analyst, processed the firearm found in Bradley’s vehicle (State Exh. 124), a firearm magazine, eight fired cartridge cases and eight fired projectiles/components of projectiles. (V28, R1024-25, 1026, 1027, 1028). The weapon was functional and had a standard trigger pull that measured between six and a half to six and three quarter pounds. (V28, R1029-30). A comparison of a test-fired projectile to those collected at the crime scene, from Pill’s vest and body, and Bradley’s SUV interior front driver’s door and front passenger side floorboard were fired from the weapon found in Bradley’s vehicle.

(V28, R1032, 1033, 1034-40, 1044, 1051-52).

Virginia Casey

Virginia Casey, crime scene investigator, BCSO, has analyzed thousands of latent print impressions. (V28, R1053, 1055). She obtained Bradley's known fingerprints and compared them to the cartridge tray from inside the ammunition box (State Exh. 125) found in Bradley's SUV. Two of Bradley's fingerprints were identified on the tray. (V28, R1062, 1066, 1072, 1077).

Cory Crumbley

Cory Crumbley, DNA analyst, FDLE, obtained known DNA samples from Bradley, Kerchner, and Deputy Pill. (V29, R1346, 1351, 1352). A reddish-brown stain/yellow stain on the murder weapon contained Bradley's DNA. (V29, R1361, 1363). A mixed DNA profile found on the trigger and textured area of the murder weapon contained Bradley's DNA as the major contributor. (V29, R1366, 1367-68).

The Autopsy

Dr. Sajid Qaiser

Dr. Sajid Qaiser performed the autopsy on Deputy Pill. (V28, R1102, 1106). She sustained five entrance gunshot wounds from four shots—three penetrating wounds and two perforating wounds which consisted of one fatal wound, one lethal wound, and three material wounds. (V28, R1127-28, 1129).

Pill had the appearance of "raccoon eyes," indicating she had sustained a gunshot within a range of two feet. (V28, R1112). There was gunpowder stippling on the upper half of her face and forehead as well as an "escalating gunshot

wound” to the top of her head. There were fractures to the cap of her skull and to the base. (V28, R1111). The gunshot wound to the top of Pill’s head removed a portion of her scalp and shattered the underlying skull bone into multiple fragments. Brain matter spilled out from the wound. The base of her skull was also fractured and contained multiple fragments. Several bullet fragments and jacket particles were removed from Pill’s head. (V28, R1112- 1115).

Pill also sustained a lethal gunshot wound to her upper left arm which exited and then re-entered her left chest area and settled in her rib cage. (V28, R1115, 1118, 1119-20, 1128). There was a gunshot to her left lateral back area and another gunshot to the base of the left side of her neck. (V28, R1124, 1126-27). In Qaiser’s opinion, the cause of death was multiple gunshot wounds and the manner of death was homicide. (V28, R1128).

Bradley’s Interview

Agent Wayne Simock

Agent Wayne Simock, BCSO, interviewed Bradley subsequent to his arrest. (V28, R1137, 1139-40). Bradley understood and waived his *Miranda*¹¹ rights. A redacted version of the videotaped interview was published for the jury.¹² (V28, R1142-43, 1146, 1149, 1153-55, State. Exh. 165).

Bradley and Kerchner stayed in a motel the night before the shooting. (V28,

¹¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694 (1966).

¹² The jury was given a redaction instruction. (V28, R1150-51).

R1157, 1189). Bradley sat in his car while Kerchner and motel staff argued about the stolen furnishings. (V28, R1194-95, 1197). Bradley left the motel with Kerchner in the passenger seat. He did not hit anyone with the car when he drove out of the parking lot. (V28, R1194, 1195, 1198). He did not see Pill's vehicle following him until she initiated the lights and siren about twenty minutes later. (V28, R1172, 1196). After he pulled over, Pill repeatedly told Bradley to open his car door. "She's like get out, get out, get out." He asked Pill, "What I did ... " And explained, "I don't ever open the car door, they ... come to you." However, when he opened his door, "I just reaching already ... I'm like what I did, tell me what I did, before I get out of the car." (V28, R1158-59). But Pill said, "I don't need to tell you what you did." (V28, R1159). Bradley knew he had outstanding warrants but Pill did not say anything about them. (V28, R1173). Pill reached for her gun. Bradley "thought she [was] going to shoot me" so he pulled his gun out from "somewhere on the seat" or "in-between the seats." (V28, R1161-62, 1177). He got the gun from a "crack head" and had it "for protection" for both himself and Kerchner. (V28, R1178, 1179; V29, R1228-29). Bradley told Kerchner, "... baby I don't want you to get mad [if] anything happen[s]" because he did not want Kerchner "involved in anything." (V28, R1172, 1173). He then shot Deputy Pill. "I shot her, I thought she was going to shoot me" because she "was trying to pull the gun out of her holster." He did not know where he shot her but "I feel like in the chest." (V28, R1163, 1169; V29, R1230). He shot her "probably twice" through the open car door and then drove off. (V28, R1164, 1165; V29, R1229, 1230).

He and Kerchner drove through the streets. “The gun went flying around” but “it wasn’t out of my hand.” He eventually “dropped it” as he drove toward John Rodes Road. (V28, R1165, 1166, 1167). Bradley did not recall getting out of the car anywhere along the way before the police eventually stopped him. (V28, R1170; V29, R1226-27). Bradley called his mother after Pill was shot and told her what had happened. She was “mad” and told Bradley that he was “stupid.” She “want[ed] to see me do good.” (V29, R1222, 1225, R1226).

Bradley took Xanax for anxiety because he was “just too hyper.” (V29, R1232). He did not have a prescription for it—“I got it from somebody else.” (V29, R1233). He recalled being in a car accident four years prior in which he “almost died.” (V29, R1234). He currently had a suspended driver’s license. (V29, R1235). He admitted he knew right from wrong and did not suffer from any mental disabilities. (V29, R1236). Bradley knew it was wrong to shoot Deputy Pill. (V29, R1239). Bradley appeared tired but “thoughtfully answered every question” about ten hours after the shooting. (V29, R1255, 1265).

The Defense’s Case in Chief Toxicology

Raven Durousseau and David McGuiness

Raven Durousseau, LPN at the Brevard County jail, collected a blood specimen from Bradley on March 7, 2012. Investigator David McGuiness, Public Defender’s office, collected a urine specimen a few minutes later. (V29, R1399-1400; 1425-26, 1429). McGuiness transported the samples to Wuesthoff Laboratory. (V30, R1428).

Linda Sullivan

Linda Sullivan is the supervisor of toxicology and forensic services at Wuesthoff Laboratory. (V30, R1430-31). Bradley's specimens were stored and then analyzed on March 13. (V30, R1436). A comprehensive blood drug screen was conducted for detection of any illicit substances or therapeutic-type drugs. (V30, R1447-48). Alprazolam and Cannabinoids were found in Bradley's blood specimen. The level of alprazolam was .063 milligram per liter which is slightly higher than the therapeutic range of .01 to .05. (V30, R1449, 1450, 1452). Under a physician's advice, however, the therapeutic range can go as high as .075. (V30, R1453). Bradley's urine sample contained hydrocodone, cannabinoids/marijuana, cocaine metabolites, and alpha-hydroxy alprazolam, which is the ordinary metabolite for alprazolam. (V30, R1451, 1453). Substances are out of the bloodstream quicker than they are out of urine. As a result, urine samples provide a longer window for drug detection than blood samples. (V30, R1453, 1456). It could not be determined when Bradley ingested the cocaine or hydrocodone that was found in his urine sample. But, "generally, we say with cocaine it can be two to four days out." It might be detected further out than four days with a chronic user. Hydrocodone can typically be detected within eight hours of ingestion. (V30, R1454-55). Sullivan could not say whether or not any of the drugs detected in Bradley's system were ingested within a twenty-four hour period of when the blood and urine samples were drawn. (V30, R1455).

Dr. Susan Skolly-Danziger, Pharm.D

Dr. Susan Skolly-Danziger is a pharmacist and clinical toxicologist. (V30,

R1509-10). She also conducted two evaluations of Bradley on November 7, 2013, and February 23, 2014. (V30, R1525-26, 1555). In Skolly-Danziger's opinion, the .063 level of alprazolam found in Bradley's system over twenty hours later subsequent to his arrest would have been about two hundred and sixteen nanogram per milliliter at the time of his arrest— "which is high." (V30, R1531).

Skolly-Danziger said marijuana use affects the prefrontal cortex part of the brain that controls memory, impulses, behavior, and planning. (V30, R1522, 1554). In Skolly-Danziger's opinion, the level of cannabinoids found in Bradley's system over twenty hours after his arrest indicated he was impaired. (V30, R1532-33). "If you extrapolate back, that level was higher ..." (V30, R1534). In her opinion, Xanax can be detected in urine for three to five days after ingestion; cocaine can be detected within a three day period. (V30, R1535).

Bradley self-reported abusing marijuana at age 12. In Skolly-Danziger's opinion, he fit the pattern for having a drug addiction due to his continuous use of marijuana. (V30, R1537-38). Bradley also self-reported consistently using drugs during the two-week period prior to the shooting. " ... he was using blunts ... using about ten of those a day ... Xanax ... several of those a day, in the last particular day probably eight to ten ... " (V30, R1538, 1539). In addition, Bradley said he ingested ten "monkeys" —amphetamine-like pills the night before the shooting but claimed "he really didn't get an effect from those." (V30, R1539). He self-reported he ingested two to three hallucinogenic mushrooms early in the morning on the day he shot Deputy Pill as well ingesting "several lines" of cocaine "just this time." (V30, R1539). In sum, in the early hours of March 6, 2012,

Bradley “kept using until he passed out. Xanax ... mushrooms ... cocaine ... So, things just came to a head ... hydrocodone ... ” In Skolly-Danziger’s opinion, using the combination of drugs influenced Bradley’s cognitive functioning at a point in time before he was arrested—“maybe 5:00, 6:00 a.m. would have been a peak time.” (V30, R1541, 1542). Skolley-Danziger concluded that, based upon all of the information provided to her, Bradley “was clearly intoxicated, he was mumbling, he was sleepy, he was - - he appeared to be very confused” at the time of his interrogation with police and in making the decision to waive his *Miranda* rights. (V30, R1543, 1548).

Brain Damage and the Ability to Waive Miranda Rights

Dr. Jacquelyn Olander, Ph.D.

Dr. Jacquelyn Olander, Ph.D., psychologist, specializes in neuropsychology. (V30, R1593). She administers mental health evaluations and evaluates people for disabilities. (V30, R1598-99). She evaluated Bradley’s ability to knowingly, voluntarily, and intelligently waive his *Miranda* rights and give a statement to police. (V30, R1600).

Olander reviewed a number of materials and he met with Bradley for a total of six hours on two occasions— March 2013 and November 2013, in which she interviewed him and administered tests. (V31, R1623, 1625). She was aware that Bradley was being administered psychotropic medications¹³ during the second

¹³ Risperidon and Doxepin.

interview. (V31, R1623-24).

During the first interview, Bradley reported he heard “voices” throughout certain parts of his life starting at age 12. (V31, R1626, 1684). In Olander’s opinion, “his presentation was consistent with that. He appeared to be at times internally distracted.” (V31, R1626, 1664, 1665-66, 1716). Bradley’s “presentation overall was consistent with somebody who [was] experiencing psychotic events, psychotic experiences, he was fearful, he was paranoid. “ (V31, R1715).

School records did not reflect any type of mental illness because that information is referred to the parent and does not go into permanent school records. (V31, R1666-67, 1684). He reported a history of psychotic experiences and “was very paranoid.” Bradley warned Olander “if I took an oath it would make me vulnerable to being taken over by the dark side.” (V31, R1645). He did not, however, exhibit this behavior during the second interview. (V31, R1626).

Test results revealed Bradley was not malingering or manipulating the self-reported information. However, compared to other adult offenders, “his tendency to acquiesce is extremely high, he would be somebody who would be very easily manipulated. He’s a passive dependent individual and [would] be very easily manipulated by others.” (V31, R1631-32, 1667-68, 1692). Olander was aware that, even though Deputy Pill repeatedly told Bradley to step out of his car, he refused to do so. (V31, R1696-97). She explained, “A person has to be in touch with reality in order to acquiesce.” (V31, R1711).

Bradley reported having no memory of the time in which he waived his *Miranda* rights. In Olander’s opinion, drugs including Xanax or benzodiazepines

affect a person's memory. Xanax "doesn't cause an event to be erased, those memories were never there." In addition, marijuana affects the ability to learn and store new memories. "It also has been found to lower IQs." (V31, R1632-33). However, Bradley's results from the Grisso test indicated a normal comprehension of *Miranda* vocabulary. (V31, R1694, 1695).

Test results for memory revealed Bradley had a fairly normal ability in most areas with the exception of the ability to apply that knowledge. "He could regurgitate the information but he had a difficult time actually applying that information." (V31, R1634, 1694). Bradley's low score on executive functioning/frontal lobe tests indicated additional testing was needed on whether or not Bradley suffers from brain damage. (V31, R1636). IQ scores were "significantly low" and fell "within the impaired" range. (V31, R1637-38). However, 2008 prison records indicated Bradley scored a 96 on a Beta IQ test—a nonverbal intelligence test, which was in the average range. (V31, R1638-39, 1674). Olander explained that a subtest of the WAIS-IV, the "matrix reasoning" test showed a below average score for Bradley which is also a nonverbal test like the Beta. Therefore, there was not a significant difference in scores. (V31, R1640). In Olander's opinion, chronic drug use also explained the difference in Bradley's IQ performance scores on the Beta and the WAIS. (V31, R1641).

Bradley self-reported he had suffered a serious head injury in 2008 and two other injuries "that could have easily resulted in a head injury." (V31, R1643, 1675). However, there were only medical records for one of Bradley's claims of a head injury. (V31, R1676-77, 1678). At age 17, Bradley went to the hospital two

days after he had a car accident complaining of neck, back, and knee pain and that “he was dazed.” He claimed he was wearing a seatbelt and his head hit the airbag. He was diagnosed with neck and knee sprains and released. (V31, R1678, 1679-80). He denied having any psychiatric history or mental health issues. (V31, R1686). However, he told Olander that he was not wearing a seatbelt, that his head hit the windshield and, further, he indicated during his police interrogation that he had spent a week in the hospital as a result of this car accident. (V31, R1680-81, 1698). In Olander’s opinion, although malingering could explain the discrepancies in Bradley’s claims, “an alternative hypothesis would be ... related to not having adequate memory stored.” (V31, R1681, 1683, 1699). Results from Bradley’s PET scan and MRI “added additional corroborative data” that supported Olander’s opinions. (V31, R1643, 1682, 1704, 1706).

Additionally, Bradley’s fears of possibly getting shot (by Deputy Pill), which he expressed during his police interrogation, were “quite relevant because it would integrate his personal experiences, personal history with his psychosis.” (V31, R1645). Bradley believed “he was going to have a short life.” (V31, R1646). In her opinion, Bradley’s statements to police were consistent with “the presence of paranoia.” (V31, R1651).

In Olander’s opinion, Bradley’s drug use since age 12 caused brain damage that affected his motivation, drive, and emotion. The brain damage was also consistent with the results from the neuropsychological testing she administered, the MRI results, and the PET scan results. (V31, R1656-1657).

Prior prison and jail records indicated Bradley denied having mental health

issues. Bradley explained that “he was ashamed and embarrassed about it and he didn’t want people to think he was crazy.” (V31, R1658, 1662). Nonetheless, Bradley denied any history of mental health issues for himself and family members. (V31, R1687-88). In Olander’s opinion, it is not uncommon that people report their mental status is “normal.” (V31, R1700). In addition, people that come from a low socio-economic setting often deny mental illness. (V31, R1701).

Bradley claimed he was whipped and beat by his stepfather. He talked to his mother about it to no avail. The beatings corresponded with the start of his drug use at age 12. In Olander’s opinion, “his developmental history of being an abused child would impact his functioning as an adult.” (V31, R1669). Olander said, “Bradley is a passive dependent individual who came from a dysfunctional family, abusive - - mother nonsupportive. This is a person who turns to others [for] support because of his organically based personality.” In her opinion, these types of individuals are “much more vulnerable to have negative outcomes ...” (V31, R1702-03).

Brevard County jail records for March 7, 2012, indicated Bradley was lucid, coherent and did not display any symptoms of mental health problems. After his transfer to Polk Correctional facility on March 13, 2012, a complete mental status exam was administered in which nothing remarkable was noted for Bradley’s status. (V31, R1688, 1689). Nonetheless, Olander concluded, in her opinion, Bradley was “significantly impaired” at the time he reportedly waived his rights. His intelligence and ability to voluntarily do so was also “significantly impaired.” (V31, R1670). In her opinion, Bradley was ‘not a coherent individual’ during his

police interview. (V31, R1714, 1715).

State's Case in Rebuttal

Dr. Bruce Goldberger, Ph.D.

Dr. Bruce Goldberger, Ph.D., forensic toxicologist, is the director of forensic toxicology at the University of Florida. He reviewed Dr. Skolley-Danziger's reports¹⁴ on how drugs may have affected Bradley's ability to knowingly, voluntarily, and intelligently waive his *Miranda* rights. (V31, R1721-22, 1735). Goldberger explained that forensic toxicologists apply toxicology for the purpose of its application to law; clinical toxicologists (Dr. Skolley-Danziger) do not necessarily have the credentials, experience and education. (V31, R1722-23).

In Goldberger's opinion, Wuesthoff Lab results for Bradley were accurate and reliable. Bradley had marijuana/metabolites and alprazolam/xanax in his blood specimen. The urine specimen contained marijuana, xanax, cocaine metabolites and hydrocodone. (V31, R1733). Substances found in the blood are applicable to impairment or intoxication. (V31, R1734). What is in the urine, however, is a byproduct/waste product. Therefore, although there were metabolites of drugs in Bradley's urine sample, "by no means could that be used to extrapolate back and say Bradley was impaired ... because a lot of drugs persist in the urine for a long period of time." Further, " ... what's in the urine doesn't mean it's going to be found in the blood." Marijuana can be found in urine for up to a month for chronic

¹⁴ December 4, 2013, and March 25, 2014, reports.

users and in the blood for several days “at levels that look to be at concentrations that one would assume would impair someone.” (V31, R1734, 1735).

In Goldberger’s opinion, evidence indicated Bradley ingested only marijuana and alprazolam. (V31, R1729). In his opinion, since Bradley had abuse marijuana since age 12, he had built up a tolerance to it and “the actual psychotropic effects on the brain would diminish over time.” (V31, R1740). Goldberger opined that it was impossible to extrapolate back to the time Bradley waived his *Miranda* rights to determine the concentration of drugs in his system because drugs metabolize over time and “we don’t know the defendant’s metabolic rate ...” (V31, R1740-41, 1742, 1765).

In Golberger’a opinion, if Bradley ingested the amount of xanax that he claimed he ingested prior to the shooting “I would expect him to be flat out in a coma state ... xanax mixed with alcohol or some other sedative ... it’s still an unbelievable quantity of drug.” (V31, R1745, 1758). Although Bradley “was sleepy” during his police interview, “he wasn’t lethargic, he wasn’t in a coma state, he could converse, I don’t think he was slurring his speech, he was more mumbling than slurring, and there were times when he was clear - - in terms of the answer to the question.” Bradley did not exhibit confusion or difficulty in answering simple and difficult questions. (V31, R1745). If Bradley appeared to be falling out of a chair during his interview, “it could be [an indication of drugs] but not necessarily definitive proof.” (V31, R1755).

Lab testing disputed Bradley’s claim (to Dr. Skolly-Danziger) that he had ingested other drugs in close proximity to the shooting. There was evidence of

recent cocaine use “but not enough evidence to support that he was impaired by it.” There was no lab testing conducted for “mushrooms.” (V31, R1746, 1747, 1748, 1758). In Goldberger’s opinion, effects from the drugs Bradley last ingested at about 4:00 a.m. on the morning of the shooting, to the time the interview was conducted at 7:30 p.m. that night, “would have been decreasing at the time of the interview.” (V31, R1749, 1756). In his opinion, Bradley was not under the influence of drugs such that he could not knowingly, voluntarily, and intelligently waive his *Miranda* rights on March 6, 2012. (V31, R1749). Goldberger did not see any signs of impairment. (V31, R1754).

Dr. Patricia Zapf, Ph.D.

Dr. Patricia Zapf, Ph.D., forensic psychologist, reviewed the same information provided to Dr. Olander and evaluated Olander’s conclusions and reports. She did not interview Bradley. (V31, R1768, 1771-72; V32, R1822, 1824).

In Zapf’s opinion, given that Bradley claimed memory loss for certain instances, additional testing should have been administered which included the Structured Interview of Reported Symptoms test “SIRS,” and the Test of Memory Malinger test “TOMM.” (V31, R1779-80; V32, R1826). There were not a lot of mental health records in this case; therefore, additional testing was important to show consistency, “when the symptoms started - - how they played out, whether they got worse, how they react to medication ...” Testing is a means of confirming the validity of self-reporting. (V31, R1781). It was “very unusual” that Bradley claimed he started hearing voices at age 12 or 13 but never reported it. (V32, R1831). Nonetheless, after reviewing the video of Bradley’s police interview, in

Zapf's opinion, Bradley "understood his rights ... waiv[ed] them willingly and moved forward with answering questions." (V31, R1789; V32, R1833, 1841-42).

Bradley clarified and corrected police on multiple occasions on what was said and "he clearly under[stood] that words make a difference in this situation." (V31, R1791). He expressed concern about not implicating Kerchner as a co-defendant. In Zapf's opinion, Bradley had "an appreciation of the severity of the situation ... what it means to be waiving his rights ... to be speaking with the officers ... " (V31, R1792). In addition, he had a "reasonable perception of time" when he explained the events that led up to the shooting. (V31, R1794-95). Zapf concluded that Bradley voluntarily, knowingly, and intelligently waived his *Miranda* rights. (V31, R1795; V32, R1842-43).

On April 1, 2014, Bradley was found guilty on all counts as charged in the indictment. (V33, R2070-71).

The Penalty Phase State Witnesses

Charles Colon

Charles Colon was Bradley's probation officer in 2010. (V34, R2303). Certified copies of Bradley's judgments and sentences were entered into evidence. Bradley had three prior cases consisting of four separate felony counts for which he was on probation.¹⁵ (V34, R2304-05). Bradley violated probation when he did

¹⁵ Brevard County Case No. 2007-CF-061680: Count 1) Burglary of a Conveyance, and Count 2) Grand Theft 2nd Degree; Brevard County Case No.

not report to Colon as required which prompted the February 2011 arrest warrants. (V34, R2306-07). He was still on probation the day of the shooting. (V34, R2307).

Gary Shrewsbury

Gary Dale Shrewsbury was at Taco Bell with friends on June 11, 2008, when Bradley called him over to a truck on the ruse that there was stereo equipment for sale. (V34, R2308-10). Bradley had a gun, and another man with Bradley grabbed Shrewsbury. The pair demanded money, and then Bradley pressed Shrewsbury in the forehead with the gun. Bradley again demanded money, but Shrewsbury refused to comply. (V34, R2310, 2317). Bradley then instructed, "Take this cracker out into the woods and kill this cracker." (V34, R2310). Shrewsbury was forced into the truck at gunpoint and transported, during which time Bradley repeated that he was going to kill Shrewsbury. (V34, R2310). Shrewsbury decided to give his money to the pair and threw it all over the truck. After he threw his money, the truck was pulled over and Shrewsbury was released. (V34, R2311).

Officer William Gleason

Officer William Gleason was dispatched after the armed robbery was reported involving Shrewsbury. (V34, R2320-21). The suspects were located that same day. Shrewsbury identified Bradley as the gunman. The gun used on

2008-CF-031707: Count 1) Possession of less than 28 Grams of Cocaine; and Brevard County Case No. 2008-CF-036782: Count 1) Robbery No Firearm, Deadly Weapon, or Other Weapon. (V12, R2026-2029).

Shrewsbury was found on the ground in front of the truck. (V34, R2321-22, 2323).

Jeremy Pill

Jeremy Pill, the victim's son, read a victim impact statement to the jury. (V34, R2325-27).

***Defense Witnesses
Experts***

Dr. Joseph Wu, M.D.

Joseph Wu, M.D., is the director of the Neuro-Cognitive Clinic at the University of California-Irvine College of Medicine. (V34, R2347-48). He is frequently consulted by other physicians to review PET and MRI scans and has given over 50 presentations on PET scan and MRI imaging. (V34, R2349-50).

MRI scans are utilized to look at the anatomy of the brain and PET scans are used for detecting the function of the brain. (V34, R2353; V35, R2436-37). Anomalies on a PET or MRI scan are associated with a greater probability of having certain kinds of impairment. In Wu's opinion, deficits in specific areas of the brain are "associated with the increased probability of impairment with the behavior function ... influenced by that region of the brain." (V34, R2359).

Wu reviewed Bradley's MRI and PET scan images.¹⁶ (V34, R2359-60). The MRI scans showed significant abnormalities in the "corpus callosum" part of the brain. (V34, R2362-63, 2382; V35, R2437). In Wu's opinion, these abnormalities

¹⁶ An MRI was conducted on October 15, 2013, and a PET scan was conducted on December 23, 2013. (V34, R2332, 2340).

were due to “head trauma or some kind of post traumatic stress disorder” or “some combination.”¹⁷ (V34, R2364, 2365; V35, R2434, 2441). PET scan images showed abnormalities in several areas—the orbital frontal cortex—which controls impulse control; and the temporal poles— which controls anxiety and emotion. (V34, R2367, 2377, 2385-86). In Wu’s opinion, these abnormalities were due to traumatic head injury and not drug use. (V34, R2368; V35, R2440-41). Wu never met Bradley and did not make a formal diagnosis. (V34, R2397).

He was aware that Bradley had not been previously diagnosed with any psychosis. In Wu’s opinion, however, Bradley “does seem to have psychotic symptoms periodically.” Bradley may have a “psychosis NOS” as well as “a major neuro-cognitive disorder” based on the imaging abnormalities and correlating reports. (V34, R2396, 2398). Wu concluded that Bradley suffers from brain damage and a major neuro-cognitive disorder. (V34, R2393, 2396). However, proper treatment and a structured environment “might be able” to reverse brain damage. (V34, R2400).

In Wu’s opinion, based on review of the MRI and PET scan images and data, and the correlation with the neuropsychological testing results, Bradley’s ability to conform his behavior to the requirements of the law “would be greatly

¹⁷ Injuries included self-reporting a fall off the monkey bars in Junior high school and hitting his head at age 15; someone hitting him in the head with a metal lock; and a car accident at age 17, in which he hit his head and ultimately declined medical treatment. (V34, R2365; V35, R2442-43, 2444, 2472).

affected.” He would have “significant difficulty being able to regulate his action appropriately.” (V35, R2425, 2426, 2430-31). However, the scans do not indicate what caused the abnormalities or how long an abnormality has existed—“I don’t think it really matters what the cause is.” (V35, R2438, 2442, 2445-46, 2471).

Wu was aware that Bradley never reported having any psychological problems prior to the time he shot Deputy Pill. There was no psychiatric or psychological documentation, either. (V35, R2447, 2452). Jail records indicated Bradley denied having any mental health problems subsequent to shooting Pill. (V35, R2448). Wu was aware, however, that Bradley was thrown around in his vehicle on March 6, 2012, after the police chase ended. (V35, R2450). Wu was also aware that about six months after Pill’s shooting, Bradley claimed he was hearing voices, declined medication, but started taking it three months later. (V35, R2450-51). Nonetheless, in Wu’s opinion, every person who shows abnormalities like Bradley’s scans show has either killed someone or is going to. (V35, R2453).

Dr. Jacquelyn Olander, Ph.D.

Dr. Jacquelyn Olander, Ph.D., interviewed Bradley on two occasions subsequent to Deputy Pill’s shooting. Bradley self-reported that he started abusing drugs at age 12 while in middle school and started hearing voices around the same time. (V35, R2487, 2488). He abused marijuana, and, as time passed, he abused ecstasy, xanax, cough syrup, and occasionally abused cocaine. (V35, R2488).

Bradley’s drug abuse increased about six months before Pill’s murder. Bradley claimed “there was a hit out on him” and he believed someone had been shooting at him a few days before he shot Pill. “As his fear increased his anxiety

increased.” (V35, R2488-89). He self-reported he started carrying a gun about two weeks before Pill’s shooting. (V35, R2500-01). Bradley also feared being shot because significant people in his life had been shot. As a result, he thought his own life would end prematurely. (V35, R2489). Bradley particularly feared police officers. (V35, R2490).

Bradley reported that during and throughout the night before the shooting, he ingested 12 xanax pills, a few lines of cocaine, drank six ounces of codeine-laced cough syrup, and ingested mushrooms, as well. (V35, R2490-91). He was not initially aware that the motel items he carried to his car were stolen items; he eventually “developed an awareness” that he was stealing but he was following Kerchner’s directions. (V35, R2503, 2504). Bradley felt an “overwhelming need” to get himself and Kerchner out of the motel area so neither one of them would be arrested. (V35, R2507, 2528). Bradley “follow[ed] his girlfriend’s directions and when she told to turn off he turned off and he stopped because she told him to pull over and stop, he wasn’t really aware at that time that police were involved.” (V35, R2491, 2529). Bradley was “confused” when Deputy Pill asked him to get out of the car; being “from the hood” meant he should not get out of the car. (V35, R2491). In Olander’s opinion, “given his use of substances connected with his damaged brain - - his ability to come up with alternative possibilities as to why the officer was asking him to get out of the car was substantially impaired.” (V35, R2491-92). Bradley claimed Deputy Pill appeared “possessed ... as if she was under the influence of darkness ...” and that is why he repeatedly asked her if she was going to shoot him. (V35, R2492).

Olander was aware Kerchner repeatedly told Bradley not to shoot Deputy Pill but he did so anyhow. (V35, R2529, 2531). Subsequent to the shooting, Bradley exhibited goal-directed behavior in order to escape. (V35, R2531). However, in Olander's opinion, Bradley shot Pill due to his paranoia. (V35, R2532, 2534, 2544). "He killed her to avoid being shot and killed by this person who [he thought] was possessed." (V35, R2533, 2535).

Nonetheless, in Olander's opinion, based upon Bradley's neuropsychological test results, drug use, brain deficits, and paranoia of being shot, Bradley's ability to conform his conduct to the requirements of the law was substantially impaired at the time of the shooting. (V35, R2496-97, 2502). In addition, "he absolutely was" under the influence of extreme mental or emotional disturbance at that time. (V35, R2497). Further, in Olander's opinion, Bradley was not able to formulate a careful plan or prearranged design to commit murder—"given the state of his brain compared to his emotional functioning, he was acting almost instinctively versus from a premeditated means of functioning." (V35, R2498).

Although Bradley claimed he had suffered head injuries, there was no documentation of that having occurred either before or after the shooting. (V35, R2513-14). In Olander's opinion, Bradley told the truth which was consistent with test results and the neuro-imaging. (V35, R2515). Although Bradley recalled his vehicle crashing into a ditch during the car chase after the shooting, his memory was "vague." (V35, R2522). Olander did not know to what extent Bradley was jostled about when his vehicle crashed. (V35, R2522, 2523). She did not recall

whether or not he was treated for any injury. (V35, R2554-55).

Olander concluded Bradley was not malingering—"I have no belief whatsoever that he was trying to manipulate me, trying to fake bad, or lie or dissimulate to me." (V35, R2553). His ability to appreciate the criminality of his conduct was substantially impaired at the time he shot Deputy Pill. (V35, R2553).

Lay Witnesses

Carrie Ellison

Carrie Ellison dated Bradley in 2010-2011 after he was released from prison. (V35, R2566-67, 2578). Bradley lived in a rough area known for drugs. (V35, R2570). Bradley treated her well and financially supported some of his family members. (V35, R2569). "If he cared about you he's going to be protective of you." (V35, R2569).

Bradley was very distraught in November 2011 when his cousin/friend Travonty Williams, was killed. (V35, R2571). Ellison was pregnant with Bradley's baby and miscarried the day of his cousin's funeral. (V35, R2572). Bradley "went numb ... he just ... withdrew." (V35, R2572). He started using drugs more heavily and was not eating much. He became paranoid and started carrying a gun. (V35, R2572-73, 2580). He claimed someone was "after him, that he had a hit on his head ... he wanted to have protection." (V35, R2574, 2579).

Bradley "wasn't fond of police officers." Nonetheless, Ellison was aware that Bradley had outstanding arrest warrants and urged him to turn himself in. (V35, R2576). Bradley was willing to turn himself in "when he was ready" and would "do his time." He never said he would hurt a police officer. (V35, R2576-

77).

Lawrence Nelson¹⁸

Lawrence Nelson is Bradley's older half-brother by four years. (V35, R2582, 2584). Lawrence and Bradley are not close but Bradley "was fun ... a good dude. He is very caring." (V35, R2583-84, 2591). He, Bradley, and their older brother, Anthony were raised in their mother's home. The three brothers also had a younger half-sister. (V35, R2582-83). At some point their mother married their stepfather¹⁹ and subsequently had a daughter with him. (V35, R2583, 2597). Their stepfather was good to their mother at first but he "went off the deep end sometimes." (V35, R2584-85). He drank heavily and became verbally, mentally, and physically abusive toward their mother and the boys. He punched them "if you didn't move fast enough." He told them, "'you're not my kids, I don't care about you.'" (V35, R2585, 2586). He pushed, shoved, and punched their mother while the boys tried to defend her. (V35, R2586). Lawrence ran away to his friend's house when he was a teenager but the Department of Children and Families was called and Lawrence had to return home. His stepfather "beat [him] up even more ..."

Brandon was also frequently beaten. (V35, R2587). The boys were occasionally beaten with palm fronds "until [their stepfather] got tired." Most of

¹⁸ For clarity, Bradley's brothers will be referred to by their first names.

¹⁹ The boys were about nine, seven, and three years old when their mother married their stepfather. (V2598).

the beatings occurred when their stepfather was drunk but occasionally they were beaten when he was sober. (V35, R2588-89). Their mother did not protect them. (V35, R2590). Bradley was on the receiving end of the violence more than the others because their stepfather did not approve of Bradley's lifestyle. "He was living the fast life ... get[ting] in trouble ... he wanted the girls ... all that stuff ..." (V35, R2586, 2592-93). However, Bradley was also beaten when he was a child. (V35, R2593).

Anthony Nelson

Anthony Nelson, Bradley's older half-brother by six years, is very close with Bradley. (V35, R2594, 2595; V36, R2626). Their stepfather started beating the boys as soon as he moved in and established himself in the household. (V35, R2598). Anthony moved out when he was fifteen-years-old because he "just got tired of the beatings." (V35, R2596-97). They were beaten with belts and cords but mostly palm fronds. Their sister, however, was not beaten. The stepfather reminded the boys "all the time" that they were not his children. (V35, R2597). Bradley started get beaten when he was about six-years-old. (V35, R2598, 2600). Their mother did not protect them. (V36, R2623, 2630).

Bradley was not a bad kid. He was happy, "always had a smile on his face." (V35, R2600; V36, R2624). Bradley changed when he was about 13-years-old. He had been through so much—"you ain't got nothing to smile about no more." (V36, R2624-25). Bradley was beaten more than the others because Anthony and Lawrence left home. (V36, R2625-26).

Bradley is a good person "all across the board." He is "always there for you

if you need to talk to him.” (V36, R2626). However, Bradley changed when his girlfriend had a miscarriage in 2011 and his friend Travontey Williams was killed. “It wasn’t the Brandon I knew.” (V36, R2631-32). Bradley started heavily abusing drugs, distrusting others, and could not “deal with people.” Bradley was also deeply affected when their cousin Marcus was murdered. (V36, R2633).

On April 8, 2014, the jury returned an advisory sentence of death by a vote of ten to two (10-2) for the murder of Deputy Pill. (V37, R2848).

Spencer Hearing

The *Spencer* hearing was held on June 5, 2014. (V37, R2860). The State presented additional witnesses: Bernie Bolte, the victim’s father; Berry Bolte, the victim’s brother; and Steven Pill, the victim’s husband. Bradley did not present additional witnesses.

Sentencing Hearing

The sentencing hearing was held on June 27, 2014. (V37, R2876). The court found the following four aggravating circumstances:²⁰ (1) The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation-great weight; (2) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person-great weight; (3) The

²⁰ The State argued six statutory aggravators. The court merged two of the aggravators into one to prevent improper doubling : law enforcement officer engaged in official duties; and, avoid arrest.

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-great weight; (4) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody and the victim of the capital felony was a law enforcement officer engaged in the performance of her official duties (merged)-great weight; and (5) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification-great weight. (V9, R1665-76).

The court found the following statutory mitigator: (1) 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-some weight. (V9, R1679-80).

The court considered the following “Existence of Any Other Factors”: (a) The defendant was severely physically abused as a child-some weight; (b) The defendant was verbally and emotionally abused as a child-some weight; (c) The defendant’s mother chose his stepfather over her own children and failed to protect him from their stepfather’s abusive treatment-some weight; (d) The defendant witnessed the physical, verbal, and emotional abuse of his mother by his stepfather-some weight; (e) The defendant witnesses the physical, verbal and emotional abuse of his siblings by his stepfather-some weight; (f) As a child, the defendant had no loving father figure or male role model-some weight; (g) The defendant has a close, loving relationship with his brother-little weight; (h) The defendant is known by his family and friends to be generous and has contributed

financially to the support of his mother and friends-little weight; (i) the defendant was addicted to and abused drugs from an early age-little weight; (j) The defendant suffers from brain damage and brain functional deficits-no weight; (k) The defendant suffered a head injury and possible traumatic brain injury prior to March 6, 2012-no established; (l) the defendant's cousin was shot to death which had a devastating emotional and psychological impact on defendant-little weight; (m) The defendant's prior girlfriend miscarried at the time his cousin died-little weight; (n) the defendant became distrustful of the motives of others, paranoid, and believed a "hit" was place on his life subsequent to his girlfriend's miscarriage and cousin's death, and obtained a gun to protect himself-little weight; (o) Several of defendant's friends and relatives were murdered, or died, which appeared to emotionally affect defendant-little weight; (p) the defendant has been diagnose with, and is being treated for mental disorders with psychotropic medications-little weight; (q) The defendant has been diagnosed with polysubstance dependence (currently in remission in a controlled environment) and passive/dependent personality traits-little weight; (r) The Defendant's full scale IQ of 70 as assessed in 2013 by the WAISC-no weight; and (s) The defendant was cooperative with law enforcement and confessed to all of the offenses of which he has been convicted-little weight. (V9, R1681-89).

The court also considered the following non-statutory mitigating circumstances: (1) Appropriate courtroom behavior-minimal weight; (2) Other factors-"consideration of life without parole means a life sentence."

Notice of appeal was duly given on July 11, 2014. On February 11, 2015,

this Court relinquished jurisdiction to the trial court in order to clarify transcription of the entire record on appeal. Bradley's *Initial Brief* was filed on or about October 27, 2015. This Answer follows.

SUMMARY OF ARGUMENT

Point One: The trial court was correct in denying a mistrial based on the state's penalty phase closing argument. The State did not make an impermissible "send a message" argument. Even if this comment was not proper prosecutorial argument, it was not so serious or egregious to warrant a mistrial because it is not so prejudicial as to vitiate the entire trial.

Point Two: The trial court did not abuse its discretion in disallowing the Appellant from questioning the jury after the guilt phase, for denying individual, sequestered *voir dire*, or for disallowing Appellant to question the venire on the facts that Bradley was a probation absconder from a previous robbery who had just committed a new robbery when he murdered Deputy Pill.

Point Three: The trial court properly allowed Ozburn to testify because her testimony was relevant to several material facts at issue and she was not called merely for the purpose of impeachment.

Point Four: The trial court properly denied Appellant's motion for mistrial based on Colon's testimony that he was a "high risk specialist." Appellant did not make a contemporaneous objection, but even if he did, the State ameliorated any negative inference the jury could make, and it is not so prejudicial as to vitiate the entire trial.

Point Five: The jury was properly instructed on the merged aggravating factors in the penalty phase. Even though the court did not give an example as required in the standard jury instructions, Appellant failed to object and it does not rise to the level of fundamental error.

Point Six: The trial court correctly evaluated the mental health mitigation evidence. There is no error in the court's weighing of that evidence, and no basis for relief of any sort.

Point Seven: *Ring v. Arizona* does not apply to cases with aggravators such as prior violent felonies or other aggravators that were established by a jury finding beyond a reasonable doubt, such as in this case. Appellant is not entitled to a stay based on the grant of *certiorari* in *Hurst*.

Point Eight: The trial court properly advised the jury on its advisory role. The standard, approved jury instructions were read and they adequately and properly address the role of the penalty phase jury.

Point Nine: Defendant's death sentence is proportionate in the face of similar aggravation and similar mitigation, under similar facts. The trial court found four aggravating circumstances and each was accorded great weight. These were weighed against one statutory, and 16 non-statutory mitigators, each afforded only "some," "little," or "minimal" weight.

Additionally, the evidence adduced at trial was sufficient for a rational trier of fact to find the existence of the elements of first-degree murder beyond a reasonable doubt.

ARGUMENT

POINT ONE: THE TRIAL COURT WAS CORRECT IN DENYING A MISTRIAL BECAUSE THE STATE’S PENALTY PHASE CLOSING ARGUMENT DID NOT VITIATE THE ENTIRE TRIAL.

On page 31 of his Initial Brief, Appellant argues that the prosecutor made an improper “message to the community” argument when he argued that the jury should reach “the conclusion that justice calls for, that the victim’s family calls for, that the Brevard County Sheriff’s Office family calls for, the law enforcement family calls for” in his penalty phase closing argument.

During the penalty phase closing argument, the prosecutor made the following comment:

When you go back to the jury room, I urge you to talk to your fellow juror, express your opinion, discuss the weighing factors of mitigating versus aggravating. I submit to you that if do you [sic], you will come to the same conclusion that justice calls for, that the Pill family calls for, that the Brevard County Sheriff’s Office family calls for, the law enforcement to the family [sic] calls for.

(V36, R2742-43).

To preserve a claim based on improper comment, trial counsel must object and request a mistrial. *See Bright v. State*, 90 So. 3d 249, 259 (Fla.), *cert. denied*, 133 S. Ct. 300, 184 L.Ed. 2d 177 (2012). Appellant’s trial counsel objected and argued for a mistrial. The trial court denied the mistrial, but issued a curative instruction to the jury to disregard any comment regarding what sentence the victim’s family, or the law enforcement community, wanted. (V36, R2748-49).

The “justice” comment was properly preserved for appeal, and as such, is

reviewed by this Court for an abuse of the trial court's discretion. *Merck v. State*, 975 So. 2d 1054 (Fla. 2007). Trial counsel objected immediately and a lengthy sidebar was had in which the objection was sustained but the mistrial was denied. (V36, R2742-2749). The prosecutor did not mention it again, and a curative instruction was given at Appellant's request. (V36, R2748-49). Contextually, the State was arguing the "victim is a law enforcement officer" aggravator, and argued at sidebar that he was merely responding to the theme the defense had woven throughout the trial, that law enforcement had been "chafe in their investigations, has been fashioning their testimony such as to obtain a conviction in this case and what I said is entirely consistent with what their position has been all the way through." (V36, R2744). The prosecutor's response tends to show that he believed he was making a fair comment on the door that was opened by the defense's theory, instead of attempting to appeal improperly to the jury.

The State contends that the evidence and the law support the trial court's ruling. This Court discussed what is proper closing argument in *Patrick v. State*, 104 So. 3d 1046, 1064 (Fla. 2012) *cert. denied*, 134 S. Ct. 85, 187 L.Ed.2d 65 (2013), when it stated:

This Court has stated that "courts of this state allow attorneys wide latitude to argue to the jury during closing argument. Logical inferences may be drawn, and counsel is allowed to advance all legitimate arguments." *Thomas v. State*, 748 So. 2d 970, 984 (Fla. 1999) (citations omitted). However, counsel may not urge the jury to consider facts not in evidence. See *Jackson v. State*, 522 So. 2d 802, 808 (Fla. 1988). The proper exercise of closing argument is to review the evidence and to explicate those inferences which may reasonably be drawn from the evidence. Conversely, it must not be used to

inflame the minds and passions of the jurors so that their verdict reflects an emotional response to the crime or the defendant rather than the logical analysis of the evidence in light of the applicable law. *Bertolotti v. State*, 476 So. 2d 130, 134 (Fla. 1985).

Even if this comment was not proper prosecutorial argument, it was not so serious or egregious to warrant a mistrial because “[a] trial court should grant a motion for mistrial only when ‘the error upon which it rests is so prejudicial as to vitiate the entire trial, making a mistrial necessary to ensure that the defendant receives a fair trial.’” *Bright v. State*, 90 So. 3d 249, 259-60 (Fla.), *cert. denied*, 133 S. Ct. 300 (2012) (quoting *Dessaure*, 891 So. 2d at 464–65); *Floyd v. State*, 913 So. 2d 564, 576 (Fla. 2005); *Wade v. State*, 41 So. 3d 857, 872 (Fla. 2010).

This Court has held that a trial court's ruling on a mistrial motion is an abuse of discretion only when the ruling denying the mistrial is arbitrary, fanciful, or unreasonable. *Id.* For a prosecutor's comments to warrant a new trial, they “must either deprive the defendant of a fair and impartial trial, materially contribute to the conviction, be so harmful or fundamentally tainted as to require a new trial, or be so inflammatory that they might have influenced the jury to reach a more severe verdict than that it would have otherwise.” *Salazar v. State*, 991 So. 2d 364, 372 (Fla. 2008). To determine whether or not a prosecutor has engaged in improper argument, it is necessary to evaluate the actions of the prosecutor in context rather than focus on the challenged statement in isolation. *See State v. Jones*, 867 So. 2d 398, 400 (Fla. 2004). This Court has outlined the factors to look to in evaluating whether or not a comment vitiates an entire trial in *Bright*, 90 So. 3d at 260, including whether or not the comment is of an isolated nature, the context in which

the comment was made, the comment in light of the evidence, and whether or not the trial court instructed the jury properly. *See generally Dessaure v. State*, 891 So. 2d 455, 465 (Fla. 2004).

The Court in *United States v. Young*, 470 U.S. 1, 105 S. Ct. 1038, 84 L.Ed.2d 1 (1985) pointed out that prosecutorial comments, even if in error, did not warrant reversal if “the jury was not influenced to stray from its responsibility to be fair and unbiased,” and it pointed out that the weight of evidence against a defendant was also a proper consideration in that analysis. *Id.* Because the jury was immediately instructed to disregard the comment here, the argument cannot be made that the prosecutor’s brief comment, standing alone, influenced the jury against being fair when Bradley was on video shooting the officer, gave a full confession, and there was an eyewitness to the crime.

In *Davis v. State*, 136 So. 3d 1169, 1207-08 (Fla. 2014), it was not improper in the penalty phase for the prosecutor to tell the jury that it had a “responsibility” to recommend the death penalty as long as the prosecutor informed the jury that its recommendation should be “based upon all the evidence in this case.” It was not improper for the prosecutor to argue that the jury will “determine whether this defendant will be held fully accountable for the crime that he's committed” or that “[j]ustice demands that [the jury] hold this defendant fully accountable for this murder.” *Id.*

Appellant asserts that the comment here was more egregious than in *Garron v. State*, 528 So. 2d 353, 358-59 (Fla. 1988), where the prosecutor urged the jury to improperly consider:

[T]he people of the State of Florida, ladies and gentlemen, have determined that in order to deter others from walking down the streets and **gunning down....**

....

[Y]ou can just imagine the pain this young girl was going through as she was laying there on the ground dying.... Imagine the anguish and the pain that Le Thi Garron felt as she was shot in the chest and drug [sic] herself from the bathroom into the bedroom where she expired.

....

The law is such that when the aggravating factors outnumber the mitigating factors, **then death is an appropriate penalty.**

....

If Le Thi were here, she would probably argue the defendant should be punished for what he did.

....

Ladies and gentlemen, I believe at this point, I would hope at this point, **that the jurors will listen to the screams and to her desires for punishment for the defendant and ask that you bring back a recommendation that will tell the people of Florida, that will deter people from permitting....**

....

[I]t is your sworn duty as you came in and became jurors to come back with a determination that the defendant should die for his actions.

Id. (emphasis added) (footnotes omitted). Clearly, *Garron* is dealing with a much more serious argument of appealing improperly to the jury, and blatantly improper argument under several theories, so it is inapplicable here, and to argue that the prosecutor's comments here were more egregious than in *Garron* is unfounded.

Appellant also makes the argument that this Court should consider the comments that were not objected-to concerning how Bradley's mitigation did not excuse killing Deputy Pill. The argument about a "straw man" is completely

unrelated to the case at bar, where the State is within the permissible bounds of advocacy to argue that mitigation does not outweigh aggravation in the case, or that mitigation does not excuse murder. In fact, contrary to Appellant's argument, the jury is *allowed* to discount "valid mitigating evidence" if they find that that mitigation has not been proven, or if it is not compelling given the facts of the case. *See Poole v. State*, 997 So. 2d 382, 395-96 (Fla. 2008) (holding that prosecutor's comment was not improper because he was attempting to rebut mitigating evidence argued by the defense.)

Appellant also cites to this Court's decision in *Campbell v. State*, 679 So. 2d 720, 724 (Fla. 1996) but *Campbell* is distinguishable on this point. In that case, the prosecutor reiterated his blatant "send a message" argument almost verbatim after the court admonished him by saying, "[p]lease don't talk about messages to other people." *Id.* In addition, this Court considered the fact that the prosecutor also specially questioned the defense expert on multiple other cases of "cop-killers," four of which were officers that had been killed in the Miami-Dade area, even though *Campbell was not a case where an officer had been murdered*. Because Campbell's resentencing took place in Miami, this Court reasoned that the prosecutor "sought to unfairly exploit the jurors' natural sense of sympathy and outrage for the fallen officers and fear for their own safety," the prosecutor "played to the jurors' most elemental fears, dragging into the trial the specter of police murders and a lawless community that could imperil the jurors and their families." *Campbell v. State*, 679 So. 2d at 724. No such improper argument was present here, so the trial court did not err in denying the motion for mistrial based on this

isolated comment.

Appellant argues that this comment was so egregious as to have warranted a mistrial, and Bradley's convictions and sentence should be reversed on appeal. The State contends that the trial court's denial of a mistrial based on this comment was proper. Here, unlike the cases cited by Appellant, there is simply no support to suggest that the prosecutor's comment that, after weighing the aggravators and mitigators, the jury will "come to the same conclusion that justice calls for," "out of a panicked sense of self-preservation" instead of a reasoned sense of justice. *Campbell v. State*, 679 So. 2d at 724. See *State v. DiGuilio*, 491 So. 2d 1129, 1138 (Fla. 1986). Moreover, even if impermissible, the comment was not so inflammatory as to warrant a mistrial. The comment did not ask for a conviction, properly relayed the weighing process, and never even mentioned the death penalty as the "conclusion" the jury would reach. Any negative effect was immediately negated by the trial court's curative instruction and the prosecutor never mentioned the Pill family, the law enforcement community, or "justice," again. Defendant is entitled to no relief on this claim.

POINT TWO: THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN LIMITING THE VOIR DIRE OF THE VENIRE PANEL CONCERNING DEFENDANT'S PRIOR VIOLENT FELONY CONVICTION AND THE FACT THAT HE WAS FLEEING AND ELUDING FROM A ROBBERY WHILE ON PROBATION

In Point Two, Appellant claims that he is entitled to a new penalty phase trial because his trial counsel was precluded from asking the jury whether they could consider a life sentence if they knew the defendant was "not only guilty of

killing an officer, but guilty of doing so as a probationer with a violent conviction in his past who was then fleeing a robbery.” (*IB* at 45-48). Appellant does not include record cites to support his argument, and, as argued by Appellant, “before voir dire that it was willing to waive any issue that would normally arise from having the jury also learn, before guilt-phase deliberations, just why Appellant is on probation, in exchange for a more searching voir dire.” The undersigned attorney was not able to find such an exchange in the record. The closest related exchange that takes place in the record appears as follows:

Mr. Moore: This, Judge, given the media coverage and the fact that the victim is a police officer and this is a death-penalty case, I would ask the Court by my motion to do a voir dire of the jury, not as to the substance of their verdict or any information about their deliberations, but rather to ask a generic question of whether at that point, if we get to this point, if the defendant is found guilty of first-degree murder, that they would be able to keep an open mind and be fair and impartial in their deliberations at that point, if they’re capable of doing that. Or not.

(V1, R52).

Here, trial counsel moves the sentencing court to allow a second *voir dire* at the outset of the penalty phase on the fact that the victim is a law-enforcement officer and whether the jurors are still amenable to mitigation evidence. This is clearly a different issue than that which Appellant now argues in his brief.

It is also possible that Appellant is referring to the motion for individual, sequestered *voir dire*. In this issue, trial counsel moves the court for “individual sequestered voir dire” based on the venire person’s comfort; the idea that each venire member would be more amenable to answering questions and not adopt the

answers of the group; and the fact that “the death of a police officer is recognized as being a different breed of homicide” and the publicity that the case generated. (V1, R107-108). The trial court denied that request in part and granted it as it pertained to individual questioning on prior knowledge of the case. (V1, R109).

In the absence of any appropriate record cites, Appellant failed to sufficiently brief this issue for the State to appropriately respond, and having found no exchange as relayed in Appellant’s *Initial Brief*, the State responds that the issue now argued by Appellant is not sufficiently preserved for appeal.

With regard to pre-trial motion number 34, which the State is assuming is the claim argued here, the trial court ruled that motion number 34 was denied, and disallowed the defense from questioning the jury as to whether they were receptive to mitigation after the guilt phase verdict and before the outset of the penalty phase. (V1, R55).

In any event, whether a trial judge should have allowed interrogation of jurors on specific subjects is reviewed under an abuse of discretion standard. *Davis v. State*, 698 So. 2d 1182, 1190 (Fla. 1997) (citing *Farina v. State*, 679 So. 2d 1151, 1154 (Fla. 1996)).

The trial court did not abuse its discretion in denying Bradley the opportunity to *voir dire* the venire after the guilt phase as requested in motion 34, or as now argued, the fact that the Defendant murdered a law enforcement officer while fleeing a robbery, having absconded from probation on a prior violent felony conviction. As to the former, as this Court has held in *Coday v. State*, 946 So. 2d 988, 1007 (Fla. 2006):

We have said that “juror interviews are not permissible unless the moving party has made sworn allegations that, if true, would require the court to order a new trial because the alleged error was so fundamental and prejudicial as to vitiate the entire proceedings.” *Johnson v. State*, 804 So. 2d 1218, 1225 (Fla. 2001). “This standard was formulated ‘in light of the strong public policy against allowing litigants either to harass jurors or to upset a verdict by attempting to ascertain some improper motive underlying it.’ ” *Id.* (quoting *Baptist Hosp. of Miami, Inc. v. Maler*, 579 So. 2d 97, 100 (Fla. 1991)).

Coday v. State, 946 So. 2d at 1007. And as to the latter, such information, presented before the guilt phase even began, would have clearly biased the jury against the defendant, rendering it impossible for the trial court to ensure he received an impartial jury, and a fair trial as required under the Constitution. The trial court has broad discretion in determining what questions may be asked of a potential juror, and the trial court here was well within its discretion to disallow this line of inflammatory questioning.

The purpose of conducting *voir dire* is to secure an impartial jury. *Teffeteller v. Dugger*, 734 So. 2d 1009, 1028 (Fla. 1999) (citing *Davis v. State*, 461 So. 2d 67, 69–70 (Fla. 1984)). The trial court has broad discretion in deciding what questions prospective jurors should be asked to that end. *See Pietri v. State*, 644 So. 2d 1347, 1351 (Fla. 1994); *Johnson v. State*, 608 So. 2d 4, 9 (Fla. 1992); *Connors v. United States*, 158 U.S. 408, 414, 15 S. Ct. 951, 953, 39 L.Ed. 1033 (1895) (holding that “[t]he trial court has a large discretion in conducting the voir dire examination of jurors” and that the trial court’s denial of defendant’s request to *voir dire* jurors on political affiliations did not reflect a “lack of sound discretion” and did not prejudice “the substantial rights of the accused.”) In *Mu’Min v. Virginia*, 500 U.S.

415, 431, 111 S. Ct. 1899, 1908, 114 L. Ed. 2d 493 (1991), the Supreme Court of the United States held that “[v]oir dire examination serves the dual purposes of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges.” *Id.* In *Mu’Min*, the High Court held that “the trial court retains great latitude in deciding what questions should be asked on *voir dire*.” *Id.*

In *Johnson v. State*, 903 So. 2d 888, 897 (Fla. 2005), this Court discussed a claim of ineffectiveness for trial counsel failing to ask more or different questions during *voir dire* to obtain a more defense-friendly jury. Though *Johnson* was reviewed under a *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984) analysis because *Johnson* was in a post-conviction posture, this Court recognized that, like the case at bar, both the trial court and State “thoroughly questioned the prospective jurors about their views of the death penalty” and any claims that more questioning would have resulted in a more defense-friendly jury was pure speculation. *Johnson v. State*, 903 So. 2d at 896. In that case, this Court discusses the purpose of *voir dire* in death cases as follows:

We begin by noting the importance of adequate voir dire on death qualification. Voir dire is an essential part of any first-degree murder trial in which the death penalty is sought. With that said, it is apparent from the record in this case that both the court and the State questioned the venire members in detail about their views both for and against the death penalty. The State and the court explained both aggravating and mitigating factors and the weighing process during the jury selection process.

Both the trial court and the State questioned the prospective jurors about their views on the death penalty. The State repeatedly stated during voir dire that if the mitigating factors outweighed the aggravating factors a sentence of life had to be imposed. Additionally,

the State repeatedly asked the jurors whether they could recommend life imprisonment if they were reasonably convinced that the mitigating factors outweighed the aggravating factors.

Id. See *Reaves v. State*, 826 So. 2d 932, 939 (Fla. 2002).

Appellant relies on cases that lend no support to his argument. He fails to cite any case holding that a jury should be questioned during *voir dire* about a defendant's prior criminal history and/or probationary status at the time of the crime. In fact, had the jury been questioned on those issues, there is no doubt there would be a claim on appeal that such information, prior to the sentencing phase, improperly influenced the jury to vote for death.

Specifically, Appellant cites to *Turner v. Murray*, 476 U.S. 28, 106 S. Ct. 1683, 90 L.Ed.2d 27 (1986); *State v. Clark*, 981 S.W. 2d 143 (Mo. 1998); and *State v. Jackson*, 107 Ohio St. 3rd 53 (Ohio 2005) for the premise that it is error for a trial court to limit *voir dire* on questions that may pertain to facts necessary to elicit bias. Each of these cases is distinguishable from the case at bar because they pertained to questions about the crime itself, and did not have the danger of eliciting a propensity argument.

The fact that the defendant had a prior armed robbery conviction and was on the run from another robbery is much more inflammatory and less indicative of potential juror bias than a case where a black defendant killed a white victim in 1986 or where the victim was a three-year-old child.

Appellant relies on *Ellington v. State*, 292 Ga. 109, 137, 735 S.E.2d 736, 761 (2012) to argue that he is entitled to a new penalty phase. *Ellington* is clearly

inapplicable here. In *Ellington*, the Georgia Supreme Court reversed the death penalty on a child murder case where the defense had been precluded from questioning the venire as to whether the prospective jurors in the case would automatically vote for a death sentence in any case in which two murder victims were young children. *Ellington* was clear that the fact that the victims were young children was “*the critical issue.*” *Ellington v. State*, 292 Ga. at 128. Moreover, the court in that case recognized:

... decisions as to what, if any, facts of a particular criminal case beyond the charges and sentencing options qualify as “critical” in terms of risking juror partiality can be difficult and context-specific. The trial court's decision on this point should be given significant deference in appellate review, and it should be reversed only for a manifest abuse of discretion. In holding that trial courts have discretion in allowing such voir dire questions, we do not suggest in any way that such questions should be routine, even in death penalty cases. Questions are appropriate only when *not* asking them runs a real risk that juror partiality driven by the fact at issue will not otherwise be identified in voir dire.

Id at 137. Furthermore, the State in that case recognized that a lengthy *voir dire* was likely necessary to uncover potential biases in child murder cases but admitted he was trying to avoid that line of questioning. *Id* at 129. Here, there is no child victim at issue and no avoidance of a particular line of questioning by the prosecutor.

Appellant further argues, “. . . [the State] . . . in its opening, closing, and penalty phase closing repeatedly emphasized that its theory that the defendant had a plan to kill any officer who might return him to prison.” (*IB* at 48). There was

nothing objectionable to this line of argument, clearly, or it would have been preserved for, or argued on, appeal. Moreover, the State has the opportunity to prove motive in the guilt phase, and the duty to prove the aggravator of prior violent felony or during the commission of/or flight from a felony in the penalty phase. The jury did not hear the nature of the offenses for which Defendant was on probation in the guilt phase, and the testimony and reports of his probation officer were sanitized so that the jury only heard that he was being supervised, and not the extensive criminal history Defendant would now argues he would have liked to have before the jury before the trial even began. (V24, R222-23, 230).

Even if this Court were to find that the trial court abused its discretion in disallowing Defendant from questioning the jury on his status as a convicted felon absconder who then shot an officer to avoid returning to prison for the robbery he had just committed, any such error could only be harmless under these facts. Appellant presents no argument to suggest that any biased jurors sat on his jury; that the proposed questioning would have identified any specific preemptory or cause challenges; or that his jury was fundamentally unfair. Because no seated jurors were challenged for cause, any potential error is waived, and the jury is presumed to be impartial. “A juror who is not challenged for cause is presumed to be impartial.” *State v. Jackson*, 836 N.E.2d 1173, 1187 (2005) (citing *State v. Broom*, 533 N.E.2d 682 (1988)). Defendant was allowed enough latitude to *voir dire* the potential jurors to ensure that he was accorded the constitutional protections of a fair, unbiased, impartial jury. Appellant has suggested nothing to show that not being allowed to *voir dire* the venire on his felony absconder status

constituted error by the trial court. Accordingly, he is not entitled to relief.

POINT THREE: THE TRIAL COURT PROPERLY ALLOWED AMANDA OZBURN’S TESTIMONY.

In Point Three, Appellant argues that the trial court erred in allowing Amanda Ozburn to testify that she had previously stated in a recorded, sworn police interview given on March 9, 2012, that Bradley told her “if I ever get pulled over they are going have to hold court in the streets because I’m going out like a soldier.” (V29, R1313). Ozburn’s testimony was proffered outside the presence of the jury. Trial counsel objected to her testimony based on her subsequent deposition testimony that her prior statement to law enforcement should not be deemed “credible.” The trial court ruled:

Okay. That goes to the weight, not the admissibility. So, I am going to overrule the objection.

(V29, R1320). The trial court then followed up with a written order filed March 27, 2014, memorializing its decision finding Ozburn’s testimony constituted:

. . . [R]elevant evidence tending to disprove material facts at issue in this trial, and its probative value is not substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence.

(V8, R1447-1450) (citing Fla. Stats. §90.401 and §90.403).

Trial counsel then asked for, and after a long discussion as to how to fashion same, was granted a special limiting instruction. (V29, R1324) (*See* V29 R1317-1325; 1331). Ozburn then testified in front of the jury where the following exchange took place with the prosecutor during direct examination:

Q: Did he ever tell you anything else?
A: Not that I recall.
Q: Did he ever tell you that he would – if he ever got pulled over they're going to have to hold court in the streets because I'm going out like a soldier?
A: I don't recall until this morning when you showed me.
Q: But he said that to you at one point?
Pirolo: Objection, Judge.
Court: Okay. It is – is it a different objection that we discussed earlier?
Pirolo: No, Your Honor, same objection that you wanted us to approach.
Court: She hasn't completed her answer. So I, want her to complete her answer and then you can renew your objection.
Ozburn: Can you repeat the question, please?
Q: All right. Do you recall Mr. Bradley making that statement to you?
A: I did not recall until this morning. I don't recall him saying that, no.
Q: Did you ever tell anybody under oath that he told you that?
A: Yes, I did.
Q: And that was in a sworn statement that you gave to the agents on March 6th of 2012.
A: Yes.
Q: Just a couple of days after the shooting?
A: Yes.
Court: Okay Mr. Pirolo due, want [sic] to renew your objection?
Pirolo: Yes.
Court: Okay. Based on a Court's prior ruling, this statement just given by this witness attributing comments to the defendant should not be considered as a proven fact but for the purpose of determining the believability or credibility of the witness.

(V29, R1330-1331).

This particular prior statement was not the subject of the motion *in limine* filed on February 19, 2014, which instead argues that:

2. Testimony by any witness, in particular Amanda Paige Ozburn, that

she saw the Defendant point a gun at her boyfriend; or that the Defendant shot up her house; or that she had seen the Defendant with a gun before March 6, 2012, or felt on in his waistline; or that she heard the Defendant say “it will always be my life over others” or alleged statements to that effect.

(V7, R1254).

Even though this particular statement was not one of the statements trial counsel sought to exclude with his motion *in limine*, and trial counsel failed to renew his objection to the statement until prompted by the trial court to do so, this Court would likely find that the objection was sufficiently timely to preserve the issue for appeal. (V29, R1331). *See Jackson v. State*, 451 So. 2d 458, 461 (Fla. 1984) (Error preserved when "objection was made during the impermissible line of questioning, which is sufficiently timely to have allowed the court, had it sustained the objection, to instruct the jury to disregard the testimony or to consider a motion for mistrial.") (discussed *infra*.)

In *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 118 S. Ct. 512, 139 L.Ed.2d 508 (1997), the United States Supreme Court stated:

We have held that abuse of discretion is the proper standard of review of a district court's evidentiary rulings. *Old Chief v. United States*, 519 U.S. 172, 174 n. 1, 117 S.Ct. 644, 647 n. 1, 136 L.Ed.2d 574 (1997); *United States v. Abel*, 469 U.S. 45, 54, 105 S.Ct. 465, 470, 83 L.Ed.2d 450 (1984). Indeed, our cases on the subject go back as far as *Spring Co. v. Edgar*, 99 U.S. 645, 658, 25 L.Ed. 487 (1879), where we said that “[c]ases arise where it is very much a matter of discretion with the court whether to receive or exclude the evidence; but the appellate court will not reverse in such a case, unless the ruling is manifestly erroneous.”

Gen. Elec. Co. v. Joiner, 522 U.S. at 141-42. This Court has recently held in

Bearden v. State, 161 So. 3d 1257, 1263 (Fla. 2015), that generally, a trial court's ruling on the admissibility of evidence will not be disturbed absent an abuse of discretion. (citing *Pantoja v. State*, 59 So. 3d 1092, 1095 (Fla. 2011)); *Dennis v. State*, 817 So. 2d 741, 758 (Fla. 2002) (citing *Zack v. State*, 753 So. 2d 9, 16 (Fla. 2000)). The trial court did not abuse its discretion by allowing the prosecutor to call Ozburn as a witness.

In *Morton v. State*, this Court stated, “[g]enerally ... if a party knowingly calls a witness for the primary purpose of introducing a prior statement which otherwise would be inadmissible, impeachment should ordinarily be excluded.” *Morton v State*, 689 So. 2d 259, 264 (Fla. 1997) (*receded from on other grounds*). This Court has recently visited this issue in *Bearden v. State*, 161 So. 3d 1257 (Fla. 2015) (citing *Curtis v. State*, 876 So. 2d 13, 20–21 (Fla. 1st DCA 2004)), holding:

Florida allows litigants to impeach their own witnesses, but that does not necessarily resolve the constitutional problem identified in *Chambers*. Although a witness may be impeached in Florida by “[a]ny party, including the party calling the witness,” pursuant to section 90.608, Florida Statutes, it is still improper under Florida law for a party to call a witness merely as a device to place the impeaching testimony before the jury. *See Morton v. State*, 689 So. 2d 259 (Fla. 1997), *receded from on other grounds by Rodriguez v. State*, 753 So. 2d 29 (Fla. 2000).

In *Bearden*, this Court reversed and remanded for a new trial because the defendant should have been able to call a witness primarily for the purpose of impeaching him based on due process grounds. *Bearden v. State*, 161 So. 3d at

1267.²¹ *Bearden* focused on the fact that the trial court had erred by conducting an improper credibility determination of the witness the impeaching party sought to call, thereby infringing upon the province of the jury, which is exactly what Appellant now asks this Court to do. Appellant states, “[Ozburn’s] proffer lacks the requisite indications that the statement was sufficiently reliable to come into evidence.” (*IB* at 52). The error in *Bearden* is not present here, where the trial court made no credibility determination of Ozburn’s testimony, properly ruling that credibility goes to the weight, and not the admissibility of a witness’s testimony. The judge, as gatekeeper, decides only whether evidence exists and is admissible. Once the evidence is admitted, the jury decides whether it is credible. *Bearden v. State*, 161 So. 3d at 1263 (citing *Carpenter v. State*, 785 So 2d 1182, 1203 (Fla. 2001)). Stated differently, “[i]t is for the jury, not the judge, to decide whether a declaration against penal interest should be credited. The trial judge exercises only a gatekeeping function. *Dewolf v. State*, 62 So. 3d 1142, 1145 (Fla. 1st DCA 2011) *approved sub nom.*

As this Court stated in *Bearden*:

[T]he credibility of an in-court witness who is testifying as to an out-of-court declaration against penal interest is not a matter for the trial court's consideration in determining whether to admit the testimony. Instead, the jury has the duty to assess the credibility of an in-court witness who is testifying about the out-of-court statement against penal interest. Indeed, the jury does not usurp the judge's role by

²¹ This holding seems to augment the rule in *Morton* interpreting section 90.608 Florida Statutes, that no party may call a witness merely to impeach them, to one that infers that only prosecutors may not.

determining admissibility of evidence; therefore, the judge should not usurp the jury's role by assessing the credibility of an in-court witness. Thus, we agree with the First District in *DeWolfe*.

Bearden v. State, 161 So. 3d at 1264. (internal citations omitted).

Here, the trial court properly held that Ozburn's testimony was relevant, and allowed the jury to determine what credibility to assign to her testimony. Like in *Dennis v. State*, 817 So. 2d 741, 761 (Fla. 2002), Ozburn was not called in bad faith for the primary purpose of impeachment where she delivered probative and relevant testimony that was helpful to the State. *Accord Wade v. State*, 156 So. 3d 1004, 1021 (Fla. 2014), *reh'g denied* (Feb. 4, 2015). In *State v. Richards*, 843 So. 2d 962, 968 (Fla. 3rd DCA 2003), the Court of Appeals held that denying the State the opportunity to impeach its witness as to her prior recanted statement would have prevented the jury from hearing "important circumstantial evidence that, if not presented at trial, might have significantly impaired the State's prosecution of Richardson." *Id. Richards* held that the pivotal question is whether the "party [is] calling a witness with the reasonable expectation that the witness will testify [to] something helpful to the party's case aside from the prior inconsistent statement." *Id.* at 965 (emphasis omitted) (quoting 1 McCormick on Evidence § 38, at 142-43 (John W. Strong ed., 5th ed. 1999)).

As the prosecutor stated, the primary purpose of calling Ozburn was not to impeach her, but:

. . . [T]o get the testimony that the defendant admitted to her that he was aware that he had outstanding arrest warrants, that he was intending to run. Secondly, she is going to I believe testify that he also carried a gun, a black gun and that she had seen it.

(V29, R1306-07).

The testimony that Ozburn gave also makes it clear that the prosecutor did not call Ozburn for the primary purpose of impeachment. Ozburn testified that she had been Bradley's friend, and that she knew him to carry a firearm matching the murder weapon in his waistband. (V29, R1329, 1339). She also testified that in December 2011, when she and Bradley were driving together, Bradley had appeared nervous when they encountered police cars. He had confided in Ozburn that he had outstanding arrest warrants and if he was stopped by police, or an attempt was made to take him into custody, "he would try to run." (V29, R1329-30, 1342). Ozburn also testified how she and Bradley abused drugs together, and how Bradley was occasionally paranoid after he used a large amount of drugs. (V29, R1339-40). This testimony was relevant to show Bradley's motive for murdering Deputy Pill, his state of mind, and that he would rather kill than be arrested. *See Escobar v. State*, 699 So. 2d 988 (Fla. 1997) *abrogated on other grounds by Connor v. State*, 803 So. 2d 598 (Fla. 2001); *Jackson v. State*, 498 So. 2d 406, 410 (Fla. 1986) (defendant's statement that "she wasn't going back to jail" was relevant to prove appellant's motive for murder); *Brooks v. State*, 918 So. 2d 181, 204 (Fla. 2005) *receded from on other grounds by State v. Sturdivant*, 94 So. 3d 434 (Fla.2012) (defendant's statement that "he can't go back," and he was "going to have to shoot [officers]" was properly admitted to show proof of his individual intent to commit murder and acknowledgment of guilt). The prosecutor also exhibited good faith by proffering Ozburn's testimony outside the presence of the jury since he was not certain of her responses. (V29, R1307).

Appellant relies on *Felton v. State*, 120 So. 3d 126, 128 (Fla. 4th DCA 2013) for support, but *Felton* is clearly distinguishable from the case at bar. In *Felton*, the prosecutor impeached the witness on a knowingly-recanted line-up and statement implicating the defendant. The prosecutor “heavily relied” on this identification, asking for the conviction based on her recanted statement. In *Felton*, the impeached witness provided no other helpful testimony to the State. In contrast to the case at bar, the prosecutor never mentioned the “go out like a soldier” comment in closing. Furthermore, Ozburn testified to the following state-friendly facts: she spent every day with Bradley; was aware he knew of his outstanding warrants; was nervous around police; had advised her he would “run and try to get away” if he was apprehended; and identified the murder weapon as consistent with a gun she saw him carry at all times in his waistband. (V29, R1327-42).

Appellant’s reliance on *Ruff v. State*, 31 So. 3d 833 (Fla. 4th DCA 2010) and *Hernandez v. State*, 31 So. 3d 873, 879-80 (Fla. 4th DCA 2010) is also misplaced. In *Ruff*, “the prosecutor did not call [Fields] with any reasonable expectation that she would testify to something helpful to his case, aside from the prior inconsistent statement,” which was regarding a previously recanted implication of the defendant, which is not the case here. Likewise, in *Hernandez*, the relevant question was whether the prosecutor could play a hearsay recording if it met the exceptions of a prior recollection recorded exception to the hearsay rule when the witness would not or could not authenticate the recording as her recollection at the

time the recording was made. While the *Hernandez* Court discusses how courts may consider three factors²² in determining whether a party calls a witness for the primary purpose of impeachment, that analysis is not necessary in this case, where Ozburn's testimony was relevant to several material facts at issue.

Even assuming *arguendo* that there was error in admitting Ozburn's testimony, it could only be harmless under these facts. *See, e.g., Rodriguez v. State*, 753 So. 2d 29 (Fla. 2000) (applying harmless error analysis to the erroneous admission of evidence). The jury would have heard from Andria Kerchner that Defendant had the murder weapon, would have seen Deputy Pill's in-car camera showing him shoot her, and heard his confession. (V25, R536-37, State Exh. 42; V26, R688, 691, 745-46; R28, R1163-65). It cannot reasonably be said that but for Ozburn's testimony, Bradley would have been acquitted, or received a life recommendation.

In *Dennis v. State*, 817 So. 2d 741, 759 (Fla. 2002), this Court held that the trial court's error in allowing the prosecutor to call a witness to impeach her at great length about the arson of her car (which was used in the murders) was harmless. 817 So. 2d at 759. Similarly here, the statement "going out like a soldier" was not a feature of the trial; was effectively mitigated by the defense in

²² (1) whether the witness's testimony surprised the calling party, (2) whether the witness's testimony affirmatively harmed the calling party, and (3) whether the impeachment of the witness was of *de minimis* substantive value. *Senterfitt v. State*, 837 So. 2d 599, 600 (Fla. 1st DCA 2003).

cross-examination; and was effectively militated against any unfair prejudice by a limiting cautionary instruction by the trial court. *See Id.* Moreover, where the prosecutor in *Dennis* questioned the witness far longer on the car burning and further referenced it during his closing argument, here, the “going out like a soldier” comment was never mentioned after the brief questioning reflected, *supra*; and where the evidentiary value of the car burning was only to establish bias. Here, Ozburn testified to several cogent points that assisted the State in its case. Any error in admitting the “going out like a soldier” comment would be far less harmful than in *Dennis*, which was harmless error.

POINT FOUR: THE TRIAL COURT PROPERLY DENIED APPELLANT’S MOTION FOR MISTRIAL BASED ON APPELLANT’S PROBATION OFFICER’S TESTIMONY

Appellant argues in Pont Four that this Court should reverse and remand for a new trial based on the trial court’s denial of a mistrial during the testimony of Bradley’s probation officer, Charles Colon, in the guilt phase. (*IB* at 54-56). Initially, it is important to point out that Appellant neither contemporaneously objected to this comment, nor contemporaneously moved for a mistrial. This fact is evidenced by the exchange as reflected in the record:

Q: Would you start by telling the ladies and gentlemen of the jury your name and if you would just direct your responses directly to them.

A: My name is Charles Colon, C-O-L-O-N.

Q: And how are you employed, sir?

A: I am employed as a high risk specialist officer with the Department of Corrections.

Q: Are you essentially a probation officer?

A: Yes, sir.

(V24, R224). After which, Colon's testimony continues for approximately 14 more questions.

In fact, the objection and motion to strike and for a mistrial based on Colon identifying himself as a high risk specialist did not occur until trial counsel was arguing his objection based on Colon reading the case numbers into the record, five record pages later. (V24, R229-231). It is clear that the actual evidence counsel is concerned with precluding by objection is the redacted warrants. The objection for Colon's job title is an aside, and as this Court has recently reiterated, when Appellant fails to contemporaneously object to a comment at trial, it is reviewed for fundamental error, defined as error which "reaches down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error." *Jordan v. State*, 176 So. 3d 920, 929 (Fla. 2015) (citing *Braddy v. State*, 111 So. 3d 810, 837 (Fla. 2012); *Brooks v. State*, 762 So. 2d 879, 899 (Fla. 2000)). As this Court held in *J.B. v. State*, 705 So. 2d 1376, 1378 (Fla. 1998):

Generally, to raise an error on appeal, a contemporaneous objection must be made at the trial level when the alleged error occurred. *Davis v. State*, 661 So. 2d 1193, 1197 (Fla. 1995). In the absence of a proper objection, a trial judge does not have an obligation to prohibit inadmissible evidence from being considered by the fact finder. See *Castor v. State*, 365 So. 2d 701 (Fla. 1978); see also Charles W. Ehrhardt, Florida Evidence § 104.1 (1996). The contemporaneous objection rule serves several purposes. Most notably, the rule provides an opportunity for trial judges, who are most familiar with the case and proceedings, to respond to objections. *Davis*, 661 So.2d at 1197. Further, it prohibits counsel from attempting to gain a tactical advantage by allowing unknown errors to go undetected and then seeking a second trial if the first decision is adverse to the client. *Id.*

Only when error is fundamental can the error be raised on appeal in the absence of a contemporaneous objection. *Crump v. State*, 622 So. 2d 963, 972 (Fla. 1993); *State v. Johnson*, 616 So. 2d 1, 3 (Fla. 1993). An error is fundamental when it goes to the foundation of the case or the merits of the cause of action and is equivalent to a denial of due process. *Johnson*, 616 So. 2d at 3.

J.B. v. State, 705 So. 2d 1376, 1378 (Fla. 1998).

The State recognizes that this Court has held that “[a]n objection need not always be made at the moment an examination enters impermissible areas of inquiry.” *Jackson v. State*, 451 So. 2d 458, 461 (Fla. 1984) (citing *Roban v. State*, 384 So. 2d 683 (Fla. 4th DCA), *review denied*, 392 So. 2d 1378, 1379 (Fla. 1980)), but avers that *Jackson* should not control, because here, unlike in *Jackson*, the objection was not made during a related line of questioning. Trial counsel decided against an instruction to the jury to disregard the testimony, and the court did consider, and, in fact, denied the motion for mistrial. (V24, R230). Here, the objection was made 14 questions after the comment. There was no further questioning or mention of Colon’s title, and the questioning at the time of the objection dealt with the admissibility of the redacted probation warrants. There was no request for a standing objection or motion *in limine*, the objection to Colon’s testimony before he was called to the stand pertained to *Williams*²³ Rule notice and not his job title, and trial counsel failed to articulate any reason for the tardiness of his objection (i.e. not wanting to call the jury’s attention to it, etc.) *Compare Barrett v. State*, 649 So. 2d 219, 221 (Fla. 1994) (Objection was

²³ *Williams v. State*, 110 So. 2d 654 (1959).

sufficiently timely to preserve issue for appeal where “[t]he State only asked three questions pertinent to the prints” at issue before trial counsel clarified before moving for a mistrial based on a discovery violation); *Jackson v. State*, 451 So. 2d at 461 (Error preserved when "objection was made during the impermissible line of questioning"); *Williams v. State*, 619 So. 2d 487 (Fla. 1st DCA 1993) (Admissibility of collateral crime evidence preserved for appeal despite lack of contemporaneous objection when trial judge commented after an off-the-record conference that "I know that you're objecting to the whole *Williams* rule line so that's no problem.")

Assuming, *arguendo* that this Court holds that this issue was properly preserved for appeal, the trial court was correct in denying a mistrial. This Court reviews a ruling on a proper motion for mistrial under an abuse of discretion standard. *Jordan v. State*, 176 So. 3d 920, 927 (Fla. 2015) (citing *Salazar v. State*, 991 So. 2d 364 (Fla. 2008)). As this Court recently held in *Jordan*:

A motion for mistrial should be granted only when it is necessary to ensure that the defendant receives a fair trial.” *Cole v. State*, 701 So. 2d 845, 853 (Fla. 1997). Stated differently, “[a] motion for a mistrial should only be granted when an error is so prejudicial as to vitiate the entire trial.” *England v. State*, 940 So. 2d 389, 401–02 (Fla. 2006); see *Hamilton v. State*, 703 So. 2d 1038, 1041 (Fla. 1997) (“A mistrial is appropriate only where the error is so prejudicial as to vitiate the entire trial.”). Under the abuse of discretion standard, a trial court's ruling will be upheld unless the “judicial action is arbitrary, fanciful, or unreasonable.... [D]iscretion is abused only where no reasonable [person] would take the view adopted by the trial court.” *Trease v. State*, 768 So. 2d 1050, 1053 n. 2 (Fla. 2000) (second alteration in original) (quoting *Huff v. State*, 569 So. 2d 1247, 1249 (Fla. 1990)).

Jordan v. State, 176 So. 3d at 927.

Appellant's contention that the jury inferred from this comment that Bradley "was known to threaten officers" and "his prior offenses were alarming in nature" is complete speculation, and not supported by the record. Appellant's reliance on *Rodriquez v. State*, 842 So. 2d 1053 (Fla. 3rd DCA 2003) is misplaced because there, the court held that evidence of a restraining order improperly bolstered the victim's credibility. Here of course, the victim was murdered and her testimony was not at issue. Likewise, *Geralds v. State*, 601 So. 2d. 1157 (Fla. 1992) is inapplicable to the case at bar. In *Geralds*, the prosecutor improperly cross-examined the defendant's neighbor by referencing the defendant's eight felony convictions multiple times over the defense's objection. *State v. Emmund*, 698 So. 2d 1318 (Fla. 3rd DCA 1997) is equally inapplicable here. In *Emmund*, the State petitioned the district court by writ of *certiorari* to review an order the trial court entered *in limine* prohibiting the State from using the statutory term, "violent career criminal" in the prosecution of a possession of a firearm by a violent career criminal charge in violation of section 790.235, Florida Statutes (1995). *Id.* at 1319. Here, aside from being a diametrically different issue, Appellant failed to file any motion *in limine* to exclude any such mention of Colon's job description as a "high risk specialist" even though Colon was a noticed witness and the defense had been provided copies of Bradley's warrant reports -- bearing Colon's name and contact information -- in discovery. (See V24, R222-224).

In any event, Colon's isolated comment that he worked as a "high risk specialist" did not deprive Appellant of a fair trial and the probation officer's job title was not so prejudicial as to vitiate the entire trial. The prosecutor successfully

ameliorated any improper associations the jury could infer when he immediately followed up Colon's comment with "[a]re you essentially a probation officer?" to which, Colon responded he was. The jury would have no idea that any probation officer was not titled a "high risk specialist." Even without this detail, the jury still heard that Bradley had three outstanding warrants and had absconded from three sentences of probation, so he was, in fact, a "high-risk" probationer.

Moreover, if there was any error, it could only be harmless under these facts. Harmless error is error for which "there is no reasonable possibility that the error contributed to the conviction." *Cannon v. State*, 40 Fla. L. Weekly S509 (Fla. Sept. 24, 2015) (citing *State v. DiGuilio*, 491 So. 2d 1129, 1135 (Fla. 1986)). Here, there is both an eyewitness and an "earwitness" to the murder; Bradley's DNA is found on the murder weapon; Bradley is on audio and video murdering the officer; and he gives a full confession. Therefore, there is no reasonable possibility that the admission of Colon's job classification as a high-risk specialist contributed to Appellant's conviction.

POINT FIVE: THE TRIAL COURT PROPERLY INSTRUCTED THE JURY ON THE AGGRAVATING FACTORS.

Appellant argues in Point Five that this Court should "reverse the death sentence and remand for the jury to reweigh the aggravating and mitigating factors." (IB at 57-60).

The jury instructions, though argued at the charge conference, were not objected to as delivered to the jury. (V36, R2667-73; V37, R2822). This issue is

not preserved for appeal. This Court reviews unpreserved claims for fundamental error.

The State contends that the evidence and the law support the trial court's ruling reading declining to amend the standard jury instructions. During the penalty phase closing arguments, the State argued:

He knew he was in trouble for violating the terms of his probation and he did not want to go back to prison. Clearly he shot and killed Deputy Pill for that reason.

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

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

(V36, R2717). *See* V36, R2712. There was no objection to this line of argument.

There was also no objection to the trial court's jury instructions as delivered. Directly after giving the sixth and final aggravating instruction that the victim is a law enforcement officer, the trial court properly instructed the penalty phase jury to negate any doubling effect on the avoid arrest and law enforcement officer victim aggravators. (V37, R2822).

As discussed in *Castro v. State*, 597 So. 2d 259, 261 (Fla. 1992), “[w]hen applicable, the jury may be instructed on ‘doubled’ aggravating circumstances since it may find one but not the other to exist. A limiting instruction properly advises the jury that should it find both aggravating factors present, it must consider the two factors as one.” *Id.* Here, the trial court instructed the jury:

The State may not rely upon a single aspect of the offense to establish more than one aggravating circumstance. Therefore, if you find that two or more of the aggravating circumstances are proven beyond a reasonable doubt by a single aspect of the offense, you are to consider that as supporting only one aggravating circumstance.

(V37, R2822). The trial court does not, admittedly, give an example as provided in Fla. Std. Jury Instr. (Crim.) 7.11, though the State had argued the two aggravators in its closing, and the court read the instruction directly after the victim is a law enforcement officer instruction.

However, [j]ury instructions are subject to the contemporaneous objection rule and, absent an objection at trial, can be raised on appeal only if fundamental error occurred.” *Cannon v. State*, 40 Fla. L. Weekly S509 (Fla. Sept. 24, 2015) (citing *Montgomery v. State*, 39 So. 3d 252, 258 (Fla. 2010)). In this case, Bradley did not object to the trial court’s jury instruction as given and the failure to provide an ad-libbed example not necessarily related to the case -- as currently required by Fla. Std. Jury Instr. (Crim.) 7.11-- does not, the State submits, rise to the level of fundamental error. As such, Appellant's claim is procedurally barred, and he is not entitled to relief.

In *Armstrong v. State*, 642 So. 2d 730, 739 (Fla. 1994), this Court held that

even when a trial court declines to give a limiting instruction on the avoid arrest and victim is a law enforcement officer aggravators, and the court fails to merge the two aggravators in its sentencing order, giving the duplicative²⁴ factors double weight, the error was harmless where there were “three valid [remaining] aggravating circumstances and the negligible mitigating evidence.” *Id.*

Moreover, in *Sims v. State*, 681 So. 2d 1112, 1117-18 (Fla. 1996), this Court held:

We likewise find that the court did not commit error by refusing to give a requested limiting instruction on the avoiding arrest aggravator. Sims contends that the failure to give the requested instruction unfairly skewed the weighing process in favor of death, because the avoiding arrest aggravator duplicates the aggravating circumstance of killing a law enforcement officer. Sims claims that the proffered limiting instruction would have clarified the distinct meanings of the

²⁴ Notably, the State asserts that in this case, the aggravators of law enforcement officer victim and avoid arrest were not necessarily duplicative because there existed other evidence of Bradley’s intent to avoid arrest unlike in *Armstrong* where this Court reasoned: “[i]n this case, the only evidence supporting the ‘committed to avoid arrest’ aggravating circumstance was the fact that the victim was a law enforcement officer. Consequently, we agree that the aggravating factors of ‘committed to avoid arrest’ and ‘victim was a law enforcement officer’ are duplicative because both factors are based on a single aspect of the offense. 642 So. 2d at 738. The additional evidence of the avoid arrest aggravator included his fleeing from officers after the murder, the admissions made to Kerchner that he “wasn’t going back”, and his probation absconder status at the time of the offense. While parole status evidence is not independently admissible during the guilt phase of a capital trial, it became relevant and admissible when it was linked to a motive for murdering the police officer. *Grossman v. State*, 525 So. 2d 833, 837 (Fla. 1988), *cert. denied*, 489 U.S. 1071, 109 S. Ct. 1354, 103 L.Ed.2d 822 (1989); *Mackiewicz v. State*, 114 So. 2d 684 (Fla. 1959), *cert. denied*, 362 U.S. 965, 80 S. Ct. 883, 4 L.Ed.2d 879 (1960); *Sims v. State*, 681 So. 2d 1112, 1115 (Fla. 1996).

two aggravating circumstances and further ensured that they would not have been given individual weight unless separately established by independent evidence. This argument is without merit because while the two factors are facially distinct, Sims suffered no prejudice in that the trial judge gave an anti-doubling instruction and merged the two factors in his sentencing order, treating them as a single aggravator without attributing additional weight.

Id.

Similarly, here, the State argued to the jury against double weight, the trial court properly gave a limiting instruction against doubling, and the trial court properly merged the aggravators in the sentencing order, avoiding an assignment of double weight to the two aggravators. (V9, R1656-97). The trial court followed this Court's authority in *Armstrong*, and delivered the appropriate jury instructions without objection. The State contends that the trial court committed no error and Appellant cites no authority to the contrary. However, even if this Court were to find error, under *Armstrong*, any error can only be harmless where there remained five (5) aggravators, all given great weight, and minimal mitigation.

**POINT SIX: THE TRIAL COURT PROPERLY WEIGHED
THE AGGRAVATING AND MITIGATING FACTORS.**

Appellant argues in Point Six, that this Court should “reverse the sentencing order and remand for a reweighing of the aggravating and mitigating factors” because, he argues, there is no competent, substantial evidence to support the trial court's denial of the “extreme mental or emotional disturbance;” “traumatic brain injury;” and “intellectual disability” mitigating factors. (*IB* at 62-63).

In *Campbell v. State*, 571 So. 2d 415 (Fla. 1990) *receded from as discussed supra*, in *Trease v. State*, 768 So. 2d 1050 (Fla. 2000), this Court established the

framework for review of mitigating circumstances: 1) whether a particular circumstance is truly mitigating in nature is a question of law and is subject to *de novo* review; 2) whether a mitigating circumstance has been established in a given case is a question of fact that is subject to the competent substantial evidence standard; and 3) the weight assigned to a mitigating circumstance is within the discretion of the trial court and is reviewed for an abuse of that discretion. *See also Kearse v. State*, 770 So. 2d 1119, 1134 (Fla. 2000) (observing that whether a particular mitigator exists and the weight to be given to it are matters within the discretion of the sentencing court); *Trease v. State*, 768 So. 2d 1050, 1055 (Fla. 2000) (receding in part from *Campbell* and holding that, while a court must **consider** all the mitigating circumstances, it may assign “little or no” weight to a particular mitigator); *Mansfield v. State*, 758 So. 2d 636 (Fla. 2000) (explaining that the trial court may reject a claim that a mitigator has been proven so long as the record contains competent substantial evidence to support the rejection). There is no defect in the sentencing order, and there is no basis for relief of any sort.

The sentencing court stated in its sentencing order that the court “ha[d] considered and weighed any and all mitigation presented during the course of the guilt phase and penalty phase.” (V9, R1676). The court recognized the proper weighing procedures as held in *Ault v. State*, 53 So. 3d 175, 188 (Fla. 2010); *Allen v. State*, 137 So. 3d 946 (Fla. 2013), and *Ford v. State*, 802 So. 2d 1121, 1134-35 (Fla. 2001), and gave all aggravating and mitigating circumstances careful and deliberate consideration and made a written finding of fact as to each, before concluding that death was the appropriate sentence. *See Rodgers v. State*, 948 So.

2d 655, 670 (Fla. 2006). (V9, R1675-76).

In his brief, Appellant says that the *Oyola v. State*, 99 So. 2d 431, 447 (Fla. 2012) line of cases entitle him to relief because the trial court did not properly weigh Appellant's mitigation in the areas of substance abuse; brain damage; and intellectual disability. However, there is no similarity between the sentencing order in *Oyola* and the sentencing order in this case. This Court described the *Oyola* sentencing order as follows:

. . . the sentencing order violated the requirements articulated in *Campbell* because the trial court did not expressly evaluate, in a well-reasoned fashion, how the evidence presented failed to support the mitigating evidence presented by Oyola. Rather, it merely gave a brief summary of its findings with regard to the mitigators, and did not expressly and specifically articulate why the evidence presented failed to support the proposed statutory mitigators, and why that same evidence warranted the allocation of slight weight to the nonstatutory mitigation evidence presented. In fact, the trial court's evaluation of the established nonstatutory mitigation evidence grouped three separate nonstatutory mitigators into a single sentence, and, in a single subsequent sentence, summarily gave them slight weight. In accordance with *Campbell*, the trial court should have separated and evaluated each nonstatutory mitigator, providing an evaluation and analysis as to why it gave each of them slight weight. In addition, the trial court's misplaced and confusing reference to what appears to be a finding with regard to nonstatutory mitigation inside the statutory mitigation section of the sentencing order further compounds its failure to render a sentencing order that reflects a well-reasoned evaluation and determination.

Oyola v. State, 99 So. 3d 431, 447 (Fla. 2012). In contrast, the sentencing order in this case devoted five (5) pages to analysis of the statutory mental mitigators and concluded, based on the facts of the crime, that Appellant was not under the influence of an extreme mental or emotional disturbance at the time of the offenses

in this case and that his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was not substantially impaired.

In pertinent part, the sentencing court said:

The Court finds the Defendant's actions before, during, and immediately after this murder indicate the Defendant's awareness of the criminality of his conduct. The Defendant planned well in advance of March 6, 2012, not to go back to prison, including obtaining a firearm and acquiring plenty of ammunition. After he shot Deputy Pill, the Defendant continued his plan not to be incarcerated by evading law enforcement and seeking gasoline for his vehicle. None of these actions suggested that the Defendant was either unaware that his actions were criminal or that he was unable to conform his conduct to the requirement of the law. To the contrary, the evidence establishes that the Defendant knew exactly that he had committed a horrendous crime, and was carrying out his overall plan not to be incarcerated again.

In order for the section 921.141(6)(b) mitigating circumstance to apply, the extreme mental or emotional disturbance must exist at the time of the murder. The Defendant did not prove by competent and substantial evidence that the brain injury existed at the time of Deputy Pill's murder. Furthermore, the Court finds that if the brain damage existed at the time the Defendant shot Deputy Pill, the brain damage did not affect Defendant's actions and thus, the Court rejects this mitigator.

The Court finds that this mitigating circumstance has not been established.

(V9, R1678-79). As this Court said in *Ault*, which was relied on by the sentencing court:

First, the record demonstrates that Ault was not substantially impaired in his ability to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. We have upheld a trial court's rejection of this mitigating circumstance when a defendant's

actions during and after the crime has indicated that he was aware of the criminality of his conduct.

Ault v. State, 53 So. 3d at 188. As this Court has made clear:

A trial court may properly reject a proposed mitigating circumstance where there is competent, substantial evidence in the record to support its rejection. *See Lebron*, 982 So. 2d at 660. As we noted in *Coday*, “[e]ven expert opinion evidence may be rejected if that evidence cannot be reconciled with other evidence in the case.” 946 So. 2d at 1003. In the present case, there was sufficient evidence in the record to support the rejection of both mitigating factors.

Ault v. State, 53 So. 3d at 189. Whatever the deficiencies in *Oyola*, they are not present in this case, which comes to this Court with a carefully drafted, well-reasoned, order supporting the death sentence. There is no basis for relief.

Even assuming, *arguendo* that the trial court erred in denying the mitigation relating to “substance abuse;” “brain damage;” and “intellectual disability,” any such error could only be harmless under these facts. Bradley’s death sentence is supported by four aggravating factors. The mitigation contemplated was not compelling under these facts, where Bradley’s stated purpose was to “kill any crackers” who tried to take him back to prison. (V26, R683, 745). He exhibited planning in deciding to kill an officer rather than go back to prison, in attempting to escape, and was coherent and logical in his subsequent interviews with police. He was not so impaired that he could not shoot three bullets into Deputy Pill’s head and torso, flee from the scene while she bled out in the street, hide in a nearby garage, and, when ultimately apprehended, calmly and coherently confess his crimes to detectives. Jurors saw for themselves the defendant’s condition and heard

for themselves his state of mind both on Deputy Pill's recording and the recording of the subsequent interrogation. Agent Wayne Simock also testified that while Bradley seemed sleepy, he was thoughtful in answering his questions, and Dr. Goldberger, upon seeing the video, testified that he did not see any indication of impairment. (V29, R1255, 1265; V31, R1745). Based on this evidence to the contrary, any mitigation as to Bradley's inability to appreciate the criminality of his conduct or to conform his actions to the requirements of the law or being under the influence of extreme emotional or mental disturbance would not be compelling. Under these facts, any error as to the trial court's assignment of weight to Bradley's mitigating factors could only be harmless beyond a reasonable doubt. *Ault, supra*; *State v. DiGuilio*, 491 So. 2d 1129, 1138 (Fla. 1986).

POINT SEVEN: THE TRIAL COURT PROPERLY DENIED APPELLANT'S RING CLAIM AND HE IS NOT ENTITLED TO A STAY BASED ON *HURST*.

In his seventh point, Appellant argues that the trial court erred in denying his *Ring* claim. Appellant offers no meaningful argument on this point but to ask this Court to hold Bradley's case in abeyance based on the Supreme Court of the United States' acceptance of certiorari review in *Hurst*. (*IB* at 68).

The trial court properly denied Appellant's *Ring* claim, and he is not entitled to stay and abate his case pending the outcome of a factually dissimilar case when he has shown no likelihood of success regardless of the outcome of *Hurst*.

While it is true the Supreme Court of the United States has accepted *certiorari* review in *Hurst*,²⁵ the fact that *certiorari* has been granted in a factually distinguishable case, does not mean that Appellant is entitled to any relief. A grant of *certiorari* by the United States Supreme Court has no precedential value. *Ritter v. Smith*, 811 F.2d 1398, 1400-05 (11th Cir. 1987). To the extent Appellant is arguing for a stay, Appellant has not demonstrated any likelihood of success with his litigation based on the *Hurst* case. Appellant has not even presented a significantly similar claim for consideration in his current litigation.

The question presented in *Hurst* was whether Florida's death penalty sentencing scheme is constitutional in light of the United States Supreme Court's decision in *Ring v. Arizona*, 536 U.S. 584, 122 S. Ct. 2428, 153 L.Ed.2d 556 (2002) when Hurst's jury recommended death in a 7-5 vote and the aggravators of prior violent felonies, contemporaneous felonies, or under a sentence of imprisonment at the time of the crime did not apply. Appellant's jury recommended death in a 10-2 decision. Hurst had not been proven to have been convicted of a prior violent felony. Appellant, unlike Hurst, was proven to have previously been convicted of a prior robbery and was also contemporaneously convicted of robbery, fleeing and eluding, and resisting arrest.

The current state of the law in Florida is that a majority of the jury must find beyond a reasonable doubt the existence of at least one aggravating circumstance

²⁵ *Hurst v. Florida*, 135 S. Ct. 1531, 191 L.Ed.2d 558 (2015).

listed in the capital sentencing statute, in order to return an advisory sentence in favor of death. *State v. Steele*, 921 So. 2d 538, 540 (Fla. 2005) (citing Sec. 921.141 (2)(a), Fla. Stat. (2004)); *Ault v. State*, 53 So. 3d 175, 205 (Fla. 2010) (a jury cannot advise in favor of death unless it finds beyond a reasonable doubt at least one statutory aggravating circumstance). The jury is not required to unanimously find a particular aggravating circumstance exists beyond a reasonable doubt. *Aguirre-Jarquin v. State*, 9 So. 3d 593, 611 (Fla. 2009) (Pariente, J., concurring).

Given the circumstances herein, any complaint about the jury's unanimity as to the prior violent felony conviction as an aggravator supporting the recommendation of death is without merit. *Evans v. Sec'y, Florida Dep't of Corr.*, 699 F.3d 1249, 1258 (11th Cir. 2012) citing *Hildwin v. Florida*, 490 U.S. 638, 109 S.Ct. 2055, 104 L.Ed.2d 728 (1989) (*per curiam*), stated: “the Sixth Amendment does not require that the specific findings authorizing the imposition of the sentence of death be made by the jury.” *Id.* at 640–41, 109 S.Ct. at 2057. So, a jury that recommends death has necessarily found at least one aggravator. According to both *Jones* and the Florida Supreme Court in *Steele*, a jury’s recommendation of death means the jury found an aggravator – that is all that is required to satisfy *Ring*. Under Florida law, the jury necessarily found (by definition) at least one aggravator in order to make that recommendation. There can be no violation of the Sixth Amendment right to a jury trial where the defendant had a jury and that jury necessarily found an aggravator.

One of the aggravators found by the trial court was the previous violent felony aggravator, based on Appellant’s contemporaneous jury conviction for

Robbery; Fleeing or Attempting to Elude a law Enforcement Officer; and Resisting an Officer with Violence, the prior violent felony aggravator was established at the guilt phase of his trial. Further, the “under sentence of imprisonment” aggravator was established by Appellant’s previous conviction for Robbery for which, he was under a probationary sentence. Because this is so, *Ring* was satisfied in three ways in this case. Therefore, even if *Hurst* is decided in such a way as to change Florida’s sentencing scheme as it relates to *Ring*, it is unlikely to affect Appellant’s case because his case falls outside the *Ring* analysis for several reasons.

See Hall v. State, 87 So. 3d 667, 671 (Fla. 2012), *cert. denied*, 133 S. Ct. 537, 184 L.Ed.2d 352 (2012) (*Ring* claim “is without merit because the prior violent felony aggravator is present in this case”); *Bryant v. State*, 901 So. 2d 810, 823 (Fla. 2005); *Robinson v. State*, 865 So. 2d 1259, 1265 (Fla. 2004) (“This Court has held that the aggravators of murder committed ‘during the course of a felony’ and prior violent felony involve facts that were already submitted to a jury during trial and, hence, are in compliance with *Ring*.”); *Hamilton v. State*, 875 So. 2d 586, 594 (Fla. 2004) (prior violent felony aggravator “need not be found by the jury”); *Johnston v. State*, 863 So. 2d 271, 286 (Fla. 2003) (The “prior violent felony conviction alone satisfies constitutional mandates because the conviction was heard by a jury and determined beyond a reasonable doubt.”)

Any speculation as to what the United States Supreme Court may or may not do at this point is pure conjecture, and the law in Florida is currently clear on this point. The lower court was correct to follow the law. For example, in *Jackson v. State*, 127 So. 3d 447 (Fla. 2013), this Court stated that it has repeatedly upheld

Florida's capital sentencing scheme. Furthermore, that scheme does not violate the United States Constitution under *Ring v. Arizona*. See also *Abdool v. State*, 53 So. 3d 208, 228 (Fla. 2010) (“This Court has also rejected [the] argument that this Court should revisit its opinions in *Bottoson v. Moore*, 833 So. 2d 693 (Fla. 2002), and *King v. Moore*, 831 So. 2d 143 (Fla. 2002), and find Florida's sentencing scheme unconstitutional.”)

Furthermore, any relief based on *Ring* could not apply to Appellant because Bradley was proven to have prior felony convictions involving the use or threat of violence. Specifically, Appellant was proven to have previously been convicted of Robbery in Brevard County Case No. 2008-CF-036782 and was a probation absconder for that offense – and three other felonies – at the time of his arrest. (V12, R2026-2029). Bradley was also contemporaneously convicted of Robbery; Fleeing or Attempting to Elude a law Enforcement Officer; and Resisting an Officer with Violence, along with the First-Degree Murder of Deputy Pill. (V2, R371-73; V33, R2070-71). This Court has consistently held that a defendant who was proven to have been convicted of a prior or contemporaneous violent felony aggravator falls outside of the *Ring* analysis. See *Hall v. State*, 87 So. 3d 667, 671 (Fla.), *cert. denied*, 133 S.Ct. 537 (2012) (*Ring* claim “is without merit because the prior violent felony aggravator is present in this case”); *Bryant v. State*, 901 So. 2d 810, 823 (Fla. 2005); *Robinson v. State*, 865 So. 2d 1259, 1265 (Fla. 2004) (“This Court has held that the aggravators of murder committed ‘during the course of a felony’ and prior violent felony involve facts that were already submitted to a jury during trial and, hence, are in compliance with *Ring*.”); *Hamilton v. State*, 875 So.

2d 586, 594 (Fla. 2004) (prior violent felony aggravator “need not be found by the jury”); *Johnston v. State*, 863 So. 2d 271, 286 (Fla. 2003) (The “prior violent felony conviction alone satisfies constitutional mandates because the conviction was heard by a jury and determined beyond a reasonable doubt.”)

Because Bradley’s *Ring* claim was properly denied by the trial court, he is not entitled to relief on this claim.

POINT EIGHT: THE TRIAL COURT PROPERLY INSTRUCTED THE JURY ON ITS ADVISORY ROLE

Appellant next argues that he is entitled to a new penalty phase because the jury was read the standard jury instructions referencing their advisory role in recommending a sentence. (*IB* at 69-71). Appellant contends that the standard jury instructions in Florida run afoul of *Caldwell v. Mississippi*, 472 U.S. 320, 105 S. Ct. 2633, 86 L.Ed.2d 231 (1985), where the prosecutor improperly argued to the jury that its decision would be reviewed by the state supreme court during the defendant’s direct appeal.

Here, Appellant requested a special “altered” jury instruction, one redacting all mentions of the jury’s advisory role. A trial court’s denial of a special jury instruction is reviewed for abuse of discretion. *See Hudson v. State*, 992 So. 2d 96, 112 (Fla. 2008). “[F]ailure to give special jury instructions does not constitute error where the instructions given adequately address the applicable legal standards.” *Coday v. State*, 946 So. 2d 988, 994 (Fla. 2006) (quoting *Stephens v. State*, 787 So. 2d 747, 755 (Fla. 2001)). The trial court denied the special instructions and, instead, instructed the jury with the standard, approved Florida jury instructions.

Regarding instructing the jury on its advisory role in recommending a sentence, this Court maintained in *Snelgrove v. State*, 107 So. 3d 242, 255 (Fla. 2012), *as revised on denial of reh'g* (Jan. 31, 2013) that jury instructions that track the standard, approved jury instructions and adequately address the role of the penalty phase jury are proper, *citing Phillips v. State*, 39 So. 3d 296, 304 (Fla. 2010), which held:

This Court has repeatedly rejected claims that the standard jury instructions impermissibly shift the burden to the defense to prove that death is not the appropriate sentence or that these instructions unconstitutionally denigrate the role of the jury in violation of *Caldwell v. Mississippi*[, 472 U.S. 320, 105 S.Ct. 2633, 86 L.Ed.2d 231 (1985)].” *Chavez v. State*, 12 So. 3d 199, 214 (Fla. 2009) (citing *Taylor v. State*, 937 So. 2d 590, 599 (Fla. 2006)) (citing *Elledge v. State*, 911 So. 2d 57, 79 (Fla. 2005); *Mansfield v. State*, 911 So. 2d 1160, 1180 (Fla. 2005); *Sweet v. Moore*, 822 So. 2d 1269, 1274 (Fla. 2002)). As this Court has stated, “[T]he standard jury instructions fully advise the jury of the importance of its role, correctly state the law, and do not denigrate the role of the jury.” *Reese v. State*, 14 So. 3d 913, 920 (Fla. 2009) (quoting *Barnhill v. State*, 971 So. 2d 106, 117 (Fla. 2007)).

Phillips, at 304 (quoting *Reese v. State*, 14 So. 3d 913, 920 (Fla. 2009)).

As stated by this Court in *Rigterink v. State*, 66 So. 3d 866, 897 (Fla. 2011):

Given this Court’s prior rulings in this area, instructing the jury in accordance with Florida’s standard penalty-phase instructions did not result in error and, consequently, this claim is without merit. This Court has consistently rejected similar claims. *See, e.g., Mansfield*, 911 So. 2d at 1180; *Sochor*, 619 So. 2d at 291; *Turner*, 614 So. 2d at 1079. Informing the jury that its recommended sentence is “advisory” is a correct statement of Florida law and does not violate *Caldwell*. *See, e.g., Combs v. State*, 525 So. 2d 853, 855–58 (Fla. 1988).

Rigterink v. State, 66 So. 3d at 897. *Accord Brown v. State*, 126 So. 3d 211, 221

(Fla. 2013), *reh'g denied* (Nov. 13, 2013), *cert. denied*, 134 S. Ct. 2141, 188 L. Ed. 2d 1130 (2014); *Patrick v. State*, 104 So. 3d 1046, 1064 (Fla. 2012). Appellant is not entitled to relief because the jury was properly instructed.

**POINT NINE: THE DEATH PENALTY IS PROPORTIONATE
WHEN COMPARED WITH SIMILAR CASES**

Appellant asserts in his final point that the death penalty is not proportionate in this case where Bradley was asked to exit a vehicle and instead, shot Deputy Barbara Pill three times and drove away. *IB* at 72-74. The State recognizes that the death penalty is “reserved only for those cases where the most aggravating and least mitigating circumstances exist.” *Wheeler v. State*, 4 So. 3d 599, 612 (Fla. 2009) (quoting *Terry v. State*, 668 So. 2d 954, 965 (Fla. 1996)).

In capital cases, this Court conducts a qualitative analysis and comparison of other capital cases to determine whether the death sentence is proportionate. *Yacob v. State*, 136 So. 3d 539, 556-58 (Fla. 2014). As discussed in *Calhoun v. State*, 138 So. 3d 350 (Fla. 2013), *reh'g denied* (May 2, 2014), *cert. denied*, 135 S. Ct. 236, 190 L. Ed. 2d 177 (2014):

[T]o ensure uniformity in death penalty proceedings, ‘we make a comprehensive analysis in order to determine whether the crime falls within the category of both the most aggravated and the least mitigated of murders, thereby assuring uniformity in the application of the sentence.’ ” *Floyd v. State*, 913 So. 2d 564, 578 (Fla. 2005) (quoting *Anderson v. State*, 841 So. 2d 390, 407–08 (Fla. 2003)). This Court has described the “proportionality review” as involving “a thoughtful, deliberate proportionality review to consider the totality of circumstances in a case, and to compare it with other capital cases.” *Tillman v. State*, 591 So. 2d 167, 169 (Fla. 1991) (quoting *Porter v. State*, 564 So. 2d 1060, 1064 (Fla. 1990) (emphasis omitted)). “This entails ‘a qualitative review by this Court of the underlying basis for

each aggravator and mitigator rather than a quantitative analysis.’ In other words, proportionality review ‘is not a comparison between the number of aggravating and mitigating circumstances.’ ” (citing *Offord v. State*, 959 So. 2d 187, 191 (Fla. 2007) (citations and emphasis omitted)).

Id.

In conducting proportionality review, this Court has stated that in the absence of “demonstrated legal error,” the trial court's findings on the aggravating and mitigating circumstances are accepted. The trial court thoroughly considered the aggravating and mitigating circumstances at issue and supported each with specific written findings of fact, finding that the aggravators outweigh the mitigators. *See Dennis v. State*, 817 So. 2d at 763. The sentencing court “has considered and weighed any and all mitigation presented during the course of the guilt phase and penalty phase.” (V9, R1676). The court recognized the proper weighing procedures as held in *Ault*, *Allen*; and *Ford*, and gave all mitigating circumstances careful and deliberate consideration and made a written finding of fact as to each, before concluding that death was the appropriate sentence. *See Rodgers v. State*, 948 So. 2d 655, 670 (Fla. 2006). (V9, 1675-76).

The trial court found that the following **four** aggravating circumstances had all been proven beyond all reasonable doubt and each was accorded **great weight**: (1) The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation; (2) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person; (3) 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; (4) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody and the victim of the capital felony was a law enforcement officer engaged in the performance of her official duties (merged); and (5) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. (V9, R1665-76).

The trial court found **one** statutory mitigator: (1) 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, and accorded this factor “**some weight**.” (V9, R1679-80).

The trial court next considered each of the following 19²⁶ non-statutory mitigating circumstances presented under, “Existence of Any Other Factors,” in turn. The trial court found as follows: (a) The defendant was severely physically abused as a child-**some weight**; (b) The defendant was verbally and emotionally abused as a child-**some weight**; (c) The defendant’s mother chose his stepfather over her own children and failed to protect him from their stepfather’s abusive treatment-**some weight**; (d) The defendant witnessed the physical, verbal, and emotional abuse of his mother by his stepfather-**some weight**; (e) The defendant witnesses the physical, verbal and emotional abuse of his siblings by his stepfather-

²⁶ 1 of these 19 was not established and 2 were given no weight. 16 were assigned weight.

some weight; (f) As a child, the defendant had no loving father figure or male role model-**some weight;** (g) The defendant has a close, loving relationship with his brother-**little weight;** (h) The defendant is known by his family and friends to be generous and has contributed financially to the support of his mother and friends-**little weight;** (i) the defendant was addicted to and abused drugs from an early age-**little weight;** (j) The defendant suffers from brain damage and brain functional deficits-**no weight;** (k) The defendant suffered a head injury and possible traumatic brain injury prior to March 6, 2012-**not established;** (l) the defendant's cousin was shot to death which had a devastating emotional and psychological impact on defendant-**little weight;** (m) The defendant's prior girlfriend miscarried at the time his cousin died-**little weight;** (n) the defendant became distrustful of the motives of others, paranoid, and believed a "hit" was place on his life subsequent to his girlfriend's miscarriage and cousin's death, and obtained a gun to protect himself-**little weight;** (o) Several of defendant's friends and relatives were murdered, or died, which appeared to emotionally affect defendant-**little weight;** (p) the defendant has been diagnosed with, and is being treated for, mental disorders with psychotropic medications-**little weight;** (q) The defendant has been diagnosed with polysubstance dependence (currently in remission in a controlled environment) and passive/dependent personality traits-**little weight;** (r) The defendant's full scale IQ of 70 as assessed in 2013 by the WAIS-**no weight;** and (s) The defendant was cooperative with law enforcement and confessed to all of the offenses of which he has been convicted-**little weight.** (V9, R1681-89). The court also considered the following non-statutory mitigating circumstances: (1) Appropriate courtroom

behavior-**minimal weight**; (2) Other factors-“consideration of life without parole means a life sentence.”

This Court considers the totality of the circumstances of the case at bar in comparing it to other capital cases in determining whether the death sentence is proportionate. *Kearse v. State*, 770 So. 2d 1119, 1134 (Fla. 2000). This Court has found the death penalty to be a proportionate sentence in cases where the totality of the circumstances is similar to those present here. The aggravation in this case is more aggravated and less mitigated than other cases involving the shooting deaths of law enforcement officers in which this Court has upheld the death penalty as proportional.

In *Burns v. State*, 699 So. 2d 646 (Fla. 1997), this Court affirmed the death sentence where the victim was a law enforcement officer who was shot after a struggle, and the trial court found one merged aggravator-that the murder was committed to avoid arrest and to hinder law enforcement-and further found one statutory mitigator, along with nonstatutory mitigation. In *Reaves v. State*, 639 So. 2d 1 (Fla. 1994), this Court found the death sentence proportionate where the defendant shot a police officer who was responding to a 911 call seven times, when the trial court found the aggravators of prior violent felony and avoid arrest and three nonstatutory mitigators. In *Wheeler v. State*, 4 So. 3d 599 (Fla. 2009), this Court affirmed the death sentence as proportionate when the defendant fatally shot a sheriff's deputy and the trial court found the aggravators of CCP (great weight); avoid arrest (great weight); and prior violent felony (some weight), outweighed the statutory mitigator that the murder was committed under extreme mental and

emotional disturbance (some weight); the statutory mitigator that capacity to conform conduct to law was substantially impaired (some weight); and eleven nonstatutory mitigators

In a strikingly similar case, *Altersberger v. State*, 103 So. 3d 122, 124 (Fla. 2012), this Court held that the death penalty was proportionate when the defendant shot an officer who had pulled him over (after telling his passenger he would do so) before fleeing the scene, leaving the officer to die in the street. The trial court in that case found the following two aggravators: (1) the victim was a law enforcement officer engaged in the lawful performance of his official duties (great weight); and (2) the murder was committed in a cold, calculated, and premeditated manner (CCP) without any pretense of moral or legal justification (great weight). The trial court balanced that aggravation against the following mitigators: (1) Altersberger was 19 years old at the time of the murder (slight weight); (2) Altersberger's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired (moderate weight); (3) the offense was committed in an unsophisticated manner (very, very slight weight); (4) Altersberger was under the influence of alcohol at the time of the offense (little weight); (5) Altersberger had a long-term history of substance abuse from age 15 (very slight weight); (6) Altersberger was brought up in a dysfunctional family and home environment (moderate weight); (7) Altersberger loves and is valued by his family (very slight weight); (8) Altersberger loved his grandfather and was devastated by his death (very slight weight); (9) Altersberger was the victim of racial discrimination within his own family (little weight); (10)

Altersberger maintained good behavior throughout the proceedings (very slight weight); and (11) Altersberger plead guilty and took responsibility for the offense (little weight). *Id.* at 125-126.

In another case involving the gunshot murder of a law enforcement officer, *Diaz v. State*, 860 So. 2d 960 (Fla. 2003), the murder occurred after an altercation and a chase, and involved a separate attempted murder in the same incident. *Id.* at 964. The trial court found three aggravators, including HAC, and five statutory mitigating circumstances, including extreme mental or emotional disturbance and the defendant's diminished capacity to conform his conduct to the law. On appeal, this Court struck HAC and left two remaining aggravating circumstances-CCP and prior violent felony conviction. Even though there were five statutory mitigators, this Court found the death sentence to be proportionate based on the circumstances present in the case. *Id.* at 971.

Based on the specific facts and circumstances of Bradley's murder of Deputy Barbara Pill, and the aggravators and mitigators found by the trial court, this Court should conclude that when compared with other capital cases, the death sentence in this case is proportionate.

SUFFICIENCY OF THE EVIDENCE

The evidence is sufficient to support Appellant's conviction for First-Degree Murder.²⁷ Although Appellant does not specifically raise the issue, this Court has a mandatory obligation to review the sufficiency of the evidence in every case in which a sentence of death has been imposed, even when not challenged. *See Jones v. State*, 963 So. 2d 180, 184 (Fla. 2007); *Fla. R. App. P.* 9.142(a)(5) ("On direct appeal in death penalty cases, whether or not insufficiency of the evidence or proportionality is an issue presented for review, the [C]ourt shall review these issues and, if necessary, remand for the appropriate relief."). "In determining the sufficiency of the evidence, the question is whether, after viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the existence of the elements of the crime beyond a reasonable doubt." *Simmons v. State*, 934 So. 2d 1100, 1111 (Fla. 2006) (*quoting Bradley v. State*, 787 So. 2d 732, 738 (Fla. 2001)).

The record in this case contains sufficient evidence to support Appellant's conviction for the First-Degree Murder of Deputy Barbara Pill. Bradley is depicted on Deputy Pill's in-car camera opening fire on Deputy Pill and gunning her down, leaving her in the street, and fleeing the scene. Bradley's voice is captured on

²⁷ Bradley was convicted of the following: Count One – First Degree Murder; Count Two – Robbery; Count Three – Guilty of Fleeing or Attempting to Elude a law Enforcement Officer; and Count Four – Resisting an Officer with Violence. (V2, R371-73; V33, R2070-71).

Deputy Pill's remote microphone asking her why he should comply with her lawful commands. His co-defendant and girlfriend, Amanda Kerchner testified that she sat beside him and handed him the gun that he murdered Deputy Pill with, after she begged him not to. She also testified that he would "do what he had to do" and "kill some crackers" in uniform if they tried to arrest him. Dieguez listened in via cell phone while "Amanda's boyfriend" opened fire on Deputy Pill. Bradley was finally arrested moments later in the same car depicted on Deputy Pill's camera. The murder weapon bearing his DNA was found in the console of that car. Finally, Bradley gave a full confession on video in which he admitted to opening fire on Deputy Pill, admitting he had shot her "probably twice" because she "was trying to pull the gun out of her holster," and then drove off. (V28, R1163-64, 1165, 1169; V29, R1229-30).

Based on a review of the evidence presented in this case, a "rational trier of fact could have found the existence of the elements of the crime beyond a reasonable doubt." *Gregory v. State*, 118 So. 3d 770, 785 (Fla. 2013) (*quoting Simmons*, 934 So. 2d at 1111) (bold emphasis omitted). Thus, this Honorable Court should conclude that there was sufficient evidence to support Bradley's convictions and affirm his sentence of death.

CONCLUSION

Based on the foregoing discussions, the State respectfully requests that this Honorable Court affirm Appellant's convictions and sentence of death.

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished by E-Mail to Christopher S. Quarles, Assistant Public Defender, quarles.chris@pd7.org and support@pd7.org; and Nancy Ryan, Assistant Public Defender ryan.nancy@pd7.org and perkins.lorraine@pd7.org, 444 Seabreeze Blvd., Suite 210, Daytona Beach, FL 32118 on this 5th day of January, 2016.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Times New Roman 14-point font.

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